

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WENDY GAUTHIER,

Plaintiff

v.

SUNHEALTH SPECIALTY SERVICES,
INC. and SUNBRIDGE HEALTHCARE
CORPORATION,

Defendants

Civil Action No.: 05CV40119-FDS

AFFIDAVIT OF MICHAEL O. SHEA

I, Michael O. Shea, under oath do hereby depose and say as follows:

1. I make this Affidavit on personal knowledge.
2. I am an Attorney with an office located at 451 Main Street, Wilbraham, Massachusetts 01095, and I represent the Plaintiff in the above-entitled action.
3. The Exhibits attached hereto contain true and accurate copies of following documents produced in the discovery phase of this litigation and otherwise:

- Exhibit 1: Deposition of Wendy Gauthier, Vol. I
- Exhibit 2: Deposition of Wendy Gauthier, Vol. II
- Exhibit 3: Deposition of Stephen G. Copper
- Exhibit 4: Deposition of Ann Marie Kendall
- Exhibit 5: Deposition of Kathleen D. Raymond
- Exhibit 6: Deposition of Lisa Franks
- Exhibit 7: Plaintiff's Medical Notes Submitted to Defendants
- Exhibit 8: Employee No. 2 File
- Exhibit 9: Employee No. 6 File
- Exhibit 10: Employee No. 9 File
- Exhibit 11: Employee No. 10 File

- Exhibit 12: Employee No. 13 File
Exhibit 13: Employee No. 15 File
Exhibit 14: Defendants' Position Paper

Signed under the pains and penalties of perjury this 30th day of April, 2007.


Michael O. Shea

EXHIBIT 1

WENDY GAUTHIER

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

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5 *****

6 WENDY GAUTHIER, *

7 Plaintiff *

8 vs. *No.: 05cv40119-FDS

9 SUNHEALTH SPECIALTY *

10 SERVICES, INC. and SUNBRIDGE *

11 HEALTHCARE CORPORATION, *

12 Defendants *

13 *****

14
15 DEPOSITION OF: WENDY GAUTHIER
16 CATUOGNO COURT REPORTING SERVICES

17 446 Main Street
18 Worcester, Massachusetts
19 February 8, 2007 3:21 p.m.

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21
22
23 Elisabeth Zahariadis
24 Certified Shorthand Reporter

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF MICHAEL O. SHEA, P.C.</p> <p>5 451 Main Street</p> <p>6 Wilbraham, MA 01095</p> <p>7 BY: MICHAEL O. SHEA, ESQ.</p> <p>8 (413) 596-8005 FAX 596-8095</p> <p>9</p> <p>10 Representing the Defendant:</p> <p>11 LAWSON & WEITZEN, LLP</p> <p>12 88 Black Falcon Avenue</p> <p>13 Boston, MA 02210</p> <p>14 BY: K. SCOTT GRIGGS, ESQ.</p> <p>15 (617) 439-4990 FAX 439-3987</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 WENDY GAUTHIER, Deponent, having first</p> <p>2 been satisfactorily identified and duly sworn,</p> <p>3 deposes and states as follows:</p> <p>4</p> <p>5</p> <p>6 EXAMINATION BY MR. GRIGGS:</p> <p>7</p> <p>8 Q. Good morning, Ms. Gauthier, my</p> <p>9 name is Scott Griggs and I represent SunBridge</p> <p>10 Care and Rehabilitation for Sandalwood with</p> <p>11 respect to the claim that you've brought against</p> <p>12 them. I'm going to ask you a few questions</p> <p>13 today and I just want you to answer to the best</p> <p>14 of your ability and to the best of your</p> <p>15 recollection.</p> <p>16 Have you ever been deposed before?</p> <p>17 A. No.</p> <p>18 Q. I'll go over just a couple of</p> <p>19 things you may have heard in the previous</p> <p>20 deposition as a matter of instructions to the</p> <p>21 deposition process.</p> <p>22 You'll have to answer questions</p> <p>23 without using your hands and just need to be</p> <p>24 verbal answers. If you can wait for me to state</p>
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<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: WENDY GAUTHIER</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Griggs 4</p> <p>7</p> <p>8 EXHIBIT: PAGE:</p> <p>9 Exhibit 1, Employee Acknowledgment.....17</p> <p>10 Exhibit 2, 12/31/03 Letter.....25</p> <p>11 Exhibit 3, 1/12/04 Letter.....26</p> <p>12 Exhibit 4, 1/26/04 Letter.....29</p> <p>13 Exhibit 5, 2004 Attendance Controller.....43</p> <p>14 Exhibit 6, MCAD Complaint.....49</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 my question before you answer, the transcript</p> <p>2 will read better. And I would only ask that you</p> <p>3 complete a question or complete your answers to</p> <p>4 one of my questions before taking a break, which</p> <p>5 you can do anytime. It's not an endurance test.</p> <p>6 Certainly you can take a break, we can certainly</p> <p>7 do that, so again, once you answer the question</p> <p>8 that's on the table.</p> <p>9 MR. GRIGGS: Michael, usual</p> <p>10 stipulations?</p> <p>11 MR. SHEA: Sure, and I'll have her</p> <p>12 read and sign.</p> <p>13 MR. GRIGGS: 30 days or it will be</p> <p>14 deemed accurate.</p> <p>15 MR. SHEA: Yes.</p> <p>16 MR. GRIGGS: All objections except</p> <p>17 as to form reserved until time of trial.</p> <p>18 MR. SHEA: Yes.</p> <p>19 Q. (By Mr. Griggs) Can you please</p> <p>20 state your full name?</p> <p>21 A. Wendy Jane Gauthier.</p> <p>22 Q. Where do you live?</p> <p>23 A. I live at 7 Grafton Street,</p> <p>24 apartment two, Millbury, Massachusetts, 01527.</p>

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3 (Pages 6 to 9)

Page 6	Page 8
<p>1 Q. You say you're from Wellesley?</p> <p>2 A. No, Millbury, Massachusetts.</p> <p>3 Q. How old are you?</p> <p>4 A. 34.</p> <p>5 Q. How many children do you have now?</p> <p>6 A. I have one.</p> <p>7 Q. Where were you born?</p> <p>8 A. I was born in Milford,</p> <p>9 Massachusetts.</p> <p>10 Q. Did you grow up in Milford?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Where would you say you grew up?</p> <p>13 A. I grew up in Northbridge until I</p> <p>14 was about four or five and moved to Grafton and</p> <p>15 I've been in Grafton since.</p> <p>16 Q. Where did you go to high school?</p> <p>17 A. I went to in Upton, Blackstone</p> <p>18 Valley Regional Vocational Technical High</p> <p>19 School.</p> <p>20 Q. Did you graduate from Blackstone</p> <p>21 Regional Vocational Technical High School?</p> <p>22 A. Yes, I did.</p> <p>23 Q. What year did you graduate?</p> <p>24 A. I graduated in 1991.</p>	<p>1 work in?</p> <p>2 A. Maintenance, I'm sorry, plant</p> <p>3 services.</p> <p>4 Q. Plant services?</p> <p>5 A. Yes.</p> <p>6 Q. What type of work did you do?</p> <p>7 A. Custodial work.</p> <p>8 Q. How long were you at WPI?</p> <p>9 A. Three years.</p> <p>10 Q. You say you worked with your mother</p> <p>11 at WPI?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Why did you leave Beaumont where</p> <p>14 you had your CNA license?</p> <p>15 A. I left there to make more money as</p> <p>16 anybody else would, benefits. Then I went back</p> <p>17 to do the CNA.</p> <p>18 Q. Why did you leave WPI?</p> <p>19 A. Yeah, I went back to do the patient</p> <p>20 care because I missed taking care of patients.</p> <p>21 Q. Where did you go after Worcester</p> <p>22 Poly Tech?</p> <p>23 A. I don't remember. I went, I worked</p> <p>24 at Northbridge Nursing Home.</p>
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<p>1 Q. It's okay if I just say Blackstone?</p> <p>2 A. That's fine.</p> <p>3 Q. Class of 1991?</p> <p>4 A. Yes.</p> <p>5 Q. Did you go to school for anything</p> <p>6 after that?</p> <p>7 A. No, I did not.</p> <p>8 Q. No other higher education?</p> <p>9 A. No.</p> <p>10 Q. After you graduated from Blackstone</p> <p>11 in 1991, did you go right to work?</p> <p>12 A. I went right for employment.</p> <p>13 Q. Where did you work?</p> <p>14 A. I worked at Beaumont Nursing Home</p> <p>15 in Northbridge. That's where I got my</p> <p>16 certification for CNA.</p> <p>17 Q. How long did you work for Beaumont?</p> <p>18 A. I worked there for two years.</p> <p>19 Q. After you worked at Beaumont, where</p> <p>20 did you work after that?</p> <p>21 A. I went to WPI after that. I</p> <p>22 worked with my mother there.</p> <p>23 Q. What part of Worcester Polytechnic</p> <p>24 Institute was that or what department did you</p>	<p>1 Q. For how long did you work at</p> <p>2 Northbridge Nursing Home?</p> <p>3 A. Maybe two years.</p> <p>4 Q. So from approximately if my math is</p> <p>5 right 1996 to?</p> <p>6 A. I'm kind of bad with dates.</p> <p>7 Q. From your best recollection, when</p> <p>8 did you work at Northbridge Nursing Home?</p> <p>9 A. I worked there for two years.</p> <p>10 Q. So you left Northbridge?</p> <p>11 A. They closed down, they went out of</p> <p>12 business.</p> <p>13 Q. That was around 1999?</p> <p>14 A. Somewhere around there, I believe.</p> <p>15 Q. Where did you work after</p> <p>16 Northbridge?</p> <p>17 A. I had worked at the Sandalwood in</p> <p>18 Oxford.</p> <p>19 Q. When did you start working at</p> <p>20 Sandalwood?</p> <p>21 A. Back in 2004, three, I'm sorry,</p> <p>22 2003.</p> <p>23 Q. Do you remember what month in 2003?</p> <p>24 A. I believe it was 12, it was</p>

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<p style="text-align: right;">Page 10</p> <p>1 December 22nd I want to say.</p> <p>2 Q. Between the time that the</p> <p>3 Northbridge Nursing Home closed and your</p> <p>4 employment at SunBridge Sandalwood, I have about</p> <p>5 a five-year gap there?</p> <p>6 A. I worked different places. Doing</p> <p>7 CNA work. I also took care of a client before I</p> <p>8 went to Sandalwood was Maureen Robal?</p> <p>9 Q. Maureen what?</p> <p>10 A. R-O-B-A-L. That was private duty</p> <p>11 care. I worked for her full time.</p> <p>12 Q. For five years?</p> <p>13 A. Yes.</p> <p>14 Q. How many hours a week was that?</p> <p>15 A. 40 hours a week.</p> <p>16 Q. Have you ever had any periods of</p> <p>17 unemployment during that time?</p> <p>18 A. Never.</p> <p>19 Q. After Blackstone?</p> <p>20 A. No.</p> <p>21 Q. When I mean unemployment, not that</p> <p>22 you were collecting unemployment, but rather</p> <p>23 there were periods when you were not working?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 12</p> <p>1 were pregnant?</p> <p>2 A. So it wouldn't become an issue if</p> <p>3 something had happened or they would know up</p> <p>4 front before I even started.</p> <p>5 Q. What do you mean by become an</p> <p>6 issue?</p> <p>7 A. Anything had happened, I just</p> <p>8 wanted her to know up front that I was pregnant.</p> <p>9 I had a lot of complications due to my</p> <p>10 pregnancy.</p> <p>11 Q. Did you tell her in this interview</p> <p>12 when you first went for your interview that you</p> <p>13 had complications?</p> <p>14 A. No, it didn't get the complications</p> <p>15 until after, after I started working there.</p> <p>16 Q. You told her that you were pregnant</p> <p>17 because you didn't want it to become an issue?</p> <p>18 A. Yeah, you know, just to tell her up</p> <p>19 front that I was pregnant. You know, that I was</p> <p>20 going to be leaving within, I don't know, eight</p> <p>21 months or nine months, whatever it is because</p> <p>22 you can leave and I was going to come back. You</p> <p>23 have 90 days.</p> <p>24 Q. Just to complete my question and</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. How did you find the job at</p> <p>2 SunBridge Sandalwood?</p> <p>3 A. I found it in the Telegram and</p> <p>4 Gazette.</p> <p>5 Q. Who did you contact at SunBridge?</p> <p>6 A. I believe it was Ann Kendall. She</p> <p>7 was the director of nursing.</p> <p>8 Q. Ann Kendall?</p> <p>9 A. Yes.</p> <p>10 Q. You went for an interview at</p> <p>11 SunBridge Sandalwood?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Who did you speak to during your</p> <p>14 interview?</p> <p>15 A. I spoke to Ann.</p> <p>16 Q. What was said in that interview?</p> <p>17 A. She asked me work history. What I</p> <p>18 was able to do. I told her that I was pregnant.</p> <p>19 I told her I was looking for full-time work on</p> <p>20 11:00 to 7:00 shift.</p> <p>21 Q. Why did you request 11:00 to 7:00?</p> <p>22 A. Because my boyfriend and I only</p> <p>23 have one car so we worked opposite shifts.</p> <p>24 Q. Why did you tell Ann Kendall you</p>	<p style="text-align: right;">Page 13</p> <p>1 I'll ask again you wait until I finish the</p> <p>2 question.</p> <p>3 To ask the question I was going to</p> <p>4 ask was that you told her, but you didn't tell</p> <p>5 her about any complications, but now you are</p> <p>6 telling me that it's because you wanted to put</p> <p>7 your future employer on notice that you would be</p> <p>8 taking leave at some point because of pregnancy?</p> <p>9 A. Correct.</p> <p>10 Q. What did you tell her in that</p> <p>11 regard?</p> <p>12 A. I just told her. She hired me and</p> <p>13 I told her. She said, that's okay we had a lot</p> <p>14 of pregnant woman working. And I said okay. I</p> <p>15 just didn't want to make it, you know.</p> <p>16 Q. Ann Kendall said that there are</p> <p>17 lots of pregnant woman working there?</p> <p>18 A. Not working there, but she worked</p> <p>19 with pregnant woman before.</p> <p>20 Q. You told Ann Kendall during your</p> <p>21 interview that you would need time off when your</p> <p>22 baby was born?</p> <p>23 A. Yes.</p> <p>24 Q. Just when your baby was born?</p>

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<p>1 A. Yes.</p> <p>2 Q. That you were going to take</p> <p>3 maternity leave?</p> <p>4 A. Yes.</p> <p>5 Q. At that time, did you tell her you</p> <p>6 were going to need time off before you gave</p> <p>7 birth?</p> <p>8 A. Not at, no.</p> <p>9 Q. By the way, did you speak to</p> <p>10 anybody about your testimony today prior to</p> <p>11 coming here today?</p> <p>12 A. No.</p> <p>13 Q. That includes your attorney. Did</p> <p>14 you speak to your attorney before?</p> <p>15 MR. SHEA: You just can't disclose</p> <p>16 the content, you can say that you talked to</p> <p>17 me.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (By Mr. Griggs) What dates did you</p> <p>20 speak to your attorney about your testimony</p> <p>21 today?</p> <p>22 A. Last week.</p> <p>23 MR. SHEA: Just your best memory.</p> <p>24 Q. (By Mr. Griggs) Did you speak to</p>	<p>1 it. Do you want to read it back and get</p> <p>2 her answer.</p> <p>3 MR. GRIGGS: You are telling her</p> <p>4 not to answer.</p> <p>5 MR. SHEA: You asked and she</p> <p>6 answered it. Can we read back the last</p> <p>7 question? She said no. I'm happy to go</p> <p>8 back in the record.</p> <p>9 MR. GRIGGS: Let's read back the</p> <p>10 question and the answer.</p> <p>11</p> <p>12 * (Question and answer read)</p> <p>13</p> <p>14 Q. (By Mr. Griggs) At the time of</p> <p>15 your interview, did you request any</p> <p>16 accommodation in any regard?</p> <p>17 A. No.</p> <p>18 Q. When was your first day of</p> <p>19 employment?</p> <p>20 A. December 22, 2004, I believe.</p> <p>21 Q. You started working 11:00 to 7:00?</p> <p>22 A. Correct.</p> <p>23 MR. SHEA: Did you say three or</p> <p>24 four?</p>
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<p>1 your attorney on more than one occasion about</p> <p>2 your testimony today?</p> <p>3 A. Yes.</p> <p>4 Q. Were you coached by your attorney</p> <p>5 about your testimony that you are going to give</p> <p>6 today?</p> <p>7 MR. SHEA: Objection. Don't answer</p> <p>8 that question. You are asking her what we</p> <p>9 said and I'm not going to have her answer</p> <p>10 that.</p> <p>11 * Q. (By Mr. Griggs) Did your attorney</p> <p>12 refresh your recollection as to what you were</p> <p>13 going to say today?</p> <p>14 MR. SHEA: Objection.</p> <p>15 * THE WITNESS: No.</p> <p>16 Q. (By Mr. Griggs) In your</p> <p>17 conversation with your attorney, was your</p> <p>18 recollection of the events regarding this</p> <p>19 lawsuit refreshed?</p> <p>20 MR. SHEA: I'm instructing her not</p> <p>21 to answer.</p> <p>22 MR. GRIGGS: It's the same question</p> <p>23 you asked earlier to my client.</p> <p>24 MR. SHEA: I think you just asked</p>	<p>1 THE WITNESS: It was December I</p> <p>2 started working, 2003.</p> <p>3 Q. (By Mr. Griggs) When you were</p> <p>4 hired, were you ever told you were an</p> <p>5 employee at will?</p> <p>6 A. No.</p> <p>7 Q. Did you ever sign a document</p> <p>8 acknowledging that you were an employee at will?</p> <p>9 A. I don't understand what you mean by</p> <p>10 that.</p> <p>11 Q. Did you ever sign a document where</p> <p>12 by you acknowledged by your signature that you</p> <p>13 were employee at will?</p> <p>14 MR. SHEA: If you know?</p> <p>15 THE WITNESS: I don't recall.</p> <p>16 Q. (By Mr. Griggs) Do you know what</p> <p>17 an employee at will means?</p> <p>18 MR. SHEA: Objection. You can</p> <p>19 answer if you know.</p> <p>20 THE WITNESS: I don't know, no.</p> <p>21 MR. GRIGGS: I'll mark this</p> <p>22 document as Exhibit 1.</p> <p>23</p> <p>24 (Exhibit 1, Employee</p>

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1 Acknowledgment, marked)

2

3 Q. (By Mr. Griggs) Have you ever
4 seen this document before that I'm just showing
5 you, Exhibit 1?6 MR. SHEA: Do you have a copy of
7 that?8 THE WITNESS: Yes, I do. Yes I've
9 seen this.10 Q. (By Mr. Griggs) Can you please
11 read for me this first paragraph, if you could?
12 Take your time.13 MR. SHEA: Do you want her to read
14 that paragraph?15 MR. GRIGGS: If she can just read
16 it into the record.17 THE WITNESS: "I have received a
18 copy of the SunBridge Healthcare
19 Corporation's Employee Handbook and
20 addendum. I realize that it is my
21 responsibility to read and familiarize
22 myself with the handbook's contents and
23 addendum. I understand that the contents
24 of this handbook and addendum summarize

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1 current policies of SunBridge Healthcare
2 Corporation, that they are intended as
3 guidelines only, and that these policies may
4 be amended at any time. I further
5 understand that the contents of the
6 handbook and addendum do not constitute the
7 terms of a contract of employment, and that
8 nothing contained in the handbook or
9 addendum can be construed as a guarantee of
10 continued employment. I understand that
11 employment with SunBridge Healthcare
12 Corporation is on an at-will basis which
13 means that the employment relationship may
14 be terminated at any time by either me or
15 SunBridge Healthcare Corporation with or
16 without reason. I understand my supervisor
17 or manager will answer any questions I have
18 about this handbook and addendum."19 Q. (By Mr. Griggs) Is that your
20 signature at the bottom of the page?

21 A. Yes, it is.

22 Q. So by this, did you acknowledge
23 that you understood that there was an employee
24 handbook?

Page 20

1 A. Yes, there was.

2 Q. You also understood that your
3 employment was not for a specific term; is that
4 correct?5 A. I don't understand what you are
6 trying to say.7 Q. You understood that by the terms of
8 that document, that SunBridge wasn't agreeing
9 to, for instance, employ you for a said period
10 of time; is that correct?

11 MR. SHEA: Like a year or so.

12 THE WITNESS: Yeah.

13 MR. SHEA: We don't have a breach
14 of contract claim.15 Q. (By Mr. Griggs) You understood
16 that SunBridge could terminate your employment
17 at any time; is that correct?

18 MR. SHEA: Objection.

19 THE WITNESS: Correct.

20 MR. SHEA: But not for any reason.

21 MR. GRIGGS: Objection. Move to
22 strike. You are not testifying today.23 Q. (By Mr. Griggs) By signing that
24 document, you understood that this employee

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1 handbook was something that could be changed
2 from time to time and only serve as a guideline?
3 A. Correct.4 Q. Did you understand that as a
5 guideline, that wasn't something that absolutely
6 had to be followed; is that correct?7 MR. SHEA: Objection. The
8 handbook?

9 THE WITNESS: Yeah.

10 MR. SHEA: I don't think we've
11 established that there was, in fact, a
12 handbook, but go ahead.13 THE WITNESS: I know there's an
14 employee handbook, but I never received an
15 employee handbook.16 Q. (By Mr. Griggs) Can you please
17 repeat to me the first sentence?18 A. "I have received a copy of the
19 SunBridge Healthcare Corporation's Employee
20 Handbook and addendum."

21 Q. Is that a true statement?

22 MR. SHEA: That she received --

23 THE WITNESS: It is on paper, but
24 I didn't receive one because I had my**CATUOGNO COURT REPORTING SERVICES****Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI**

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7 (Pages 22 to 25)

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<p>1 orientation at another facility because</p> <p>2 they didn't have a person to do</p> <p>3 orientation. So they told us to sign it</p> <p>4 and then when we get to SunBridge or</p> <p>5 Sandalwood, we would receive a handbook,</p> <p>6 and we never received a handbook.</p> <p>7 Q. (By Mr. Griggs) You signed this</p> <p>8 document without --</p> <p>9 A. I was told to sign it, yes. I was</p> <p>10 told to sign it from an employee at SunBridge on</p> <p>11 Hammond Street, Hammond House, that's where I</p> <p>12 had to go for my orientation.</p> <p>13 Q. You signed this although you did</p> <p>14 not receive a handbook?</p> <p>15 A. Correct.</p> <p>16 Q. Were you pregnant -- strike that.</p> <p>17 When you started work at SunBridge</p> <p>18 Sandalwood, did you have any restrictions on the</p> <p>19 amount of weight you could lift?</p> <p>20 A. No, not until after I got injured</p> <p>21 on the job.</p> <p>22 Q. At the time you started work on</p> <p>23 December 22, 2003 you had no lifting</p> <p>24 restrictions, is that your testimony?</p>	<p>1 Q. Did you ever ask for light duty?</p> <p>2 A. Yes, I did.</p> <p>3 Q. When did you ask for light duty?</p> <p>4 A. I believe it was around after I had</p> <p>5 got injured on the job which was 4/28. Maybe a</p> <p>6 couple days after I was injured on the job. I</p> <p>7 had to see my doctor and that's when he gave me</p> <p>8 a note for light duty.</p> <p>9 Q. Did you ever submit that note for</p> <p>10 light duty to --</p> <p>11 A. Yes, I did.</p> <p>12 Q. -- somebody at SunBridge?</p> <p>13 A. Yes, I did.</p> <p>14 Q. To whom did you submit it?</p> <p>15 A. I submitted it to Ann Kendall.</p> <p>16 Q. You are referring to a letter from</p> <p>17 what doctor?</p> <p>18 A. Dr. Faricy.</p> <p>19 Q. Do you have a copy of that letter?</p> <p>20 A. No, I do not.</p> <p>21 MR. GRIGGS: Off the record.</p> <p>22</p> <p>23 (Off record discussion)</p> <p>24</p>
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<p>1 A. Correct.</p> <p>2 Q. You wouldn't have told Ann Kendall</p> <p>3 or anybody that you had lifting restrictions at</p> <p>4 the time you were hired; is that correct?</p> <p>5 A. No.</p> <p>6 Q. There were no restrictions?</p> <p>7 A. No, none.</p> <p>8 Q. When were you injured on the job?</p> <p>9 A. 4/28/04.</p> <p>10 Q. How did that take place?</p> <p>11 A. I got kicked in the abdomen and I</p> <p>12 complained of pain and I was sent out to the</p> <p>13 hospital. I drove myself during patient care.</p> <p>14 Q. Was an ambulance called on your</p> <p>15 behalf?</p> <p>16 A. No, it was not. I was told I was</p> <p>17 responsible to pay for the ambulance, so I went</p> <p>18 on my own.</p> <p>19 Q. Did you have health insurance</p> <p>20 coverage at the time?</p> <p>21 A. I had Mass Health.</p> <p>22 Q. Did somebody tell you that Mass</p> <p>23 Health would not pay for the ambulance?</p> <p>24 A. No, they did not, they had no idea.</p>	<p>1 MR. GRIGGS: Back on the record.</p> <p>2 Q. (By Mr. Griggs) When you were</p> <p>3 hired as of December 22, 2003, once again, and I</p> <p>4 know I've already asked this, but I want to</p> <p>5 clarify this, you say you had no lifting</p> <p>6 restrictions?</p> <p>7 A. Correct.</p> <p>8 Q. I'm going to show you a document</p> <p>9 which I'll have marked as Exhibit 2 from the</p> <p>10 office of Lester Mietkiewicz, primary care</p> <p>11 physician in Grafton.</p> <p>12 MR. GRIGGS: Can you mark this?</p> <p>13</p> <p>14 (Exhibit 2, 12/31/03 Letter,</p> <p>15 marked)</p> <p>16</p> <p>17 Q. (By Mr. Griggs) Can you tell me</p> <p>18 what that says if you can?</p> <p>19 A. "Wendy was seen today for an</p> <p>20 employment examination. She is 12 weeks</p> <p>21 pregnant and no heavy lifting is suggested."</p> <p>22 12/22 to 5/25/04.</p> <p>23 Q. Do you see where it says no heavy</p> <p>24 lifting?</p>

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8 (Pages 26 to 29)

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1 A. Yes, it looks like no heavy lifting
2 to me is suggested.

3 Q. Did you provide this to SunBridge?
4 MR. SHEA: You haven't established
5 that she's ever seen that. That looks like
6 an employment examination.

7 Q. (By Mr. Griggs) Have you ever seen
8 this before?

9 A. No.

10 Q. Were you ever asked by Ann Kendall
11 for a doctor's note?

12 A. Prior to hire?

13 Q. Let's start with that, prior to
14 hire.

15 A. No.

16 Q. At any time?

17 A. No.

18 MR. GRIGGS: I'm going to mark this
19 as Exhibit 3.

20
21 (Exhibit 3, 1/12/04 Letter,
22 marked)

23
24 Q. (By Mr. Griggs) I'm going to show

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1 you from Drs. Farricy and Kraft it appears?

2 A. Yes, that's my doctor.

3 Q. Dated January 12, 2004, have you
4 seen that before?

5 A. Yes, I have.

6 Q. When did you first see that letter?

7 A. I saw it in my personnel file.

8 Q. Did you ask that this doctor write
9 that letter?

10 A. Yes, I did.

11 Q. Why did you ask him to write the
12 letter?

13 A. Because Ann has refused to give me
14 light duty when light duty was denied to me.

15 Q. Let's go back. You said you first
16 requested light duty after you were injured on
17 the job in April of 2004; is that correct?

18 A. Right.

19 Q. When did you first request light
20 duty?

21 A. I first requested light duty after
22 I was injured on the job. My doctor requested
23 light duty.

24 Q. In April of 2004?

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1 A. Yes.

2 Q. The date of this letter is January
3 12, 2004?

4 A. I must have given her doctor's
5 notes in between. I don't recall.

6 Q. What I'm asking is, in addition --

7 A. Because I went to the doctors and I
8 gave her the notes kind of up to date. I don't
9 know.

10 Q. In addition to Exhibit No. 2 which
11 was a doctor's note dated December 31 of 2003
12 saying no heavy lifting. Here's another one
13 from Dr. Farricy in addition to the one from Dr.
14 Mietkiewicz on December 31st. The one on
15 January 12th also says working with the
16 assistance of another coworker.

17 If you could just please read this
18 letter?

19 A. Yeah, I've read it.

20 MR. SHEA: Do you want it read into
21 the record?

22 Q. (By Mr. Griggs) Will you read it
23 into the record?

24 A. It would be, "to whom it may

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1 concern, Wendy Gauthier is a patient under my
2 care for her pregnancy. I am recommending she
3 be able to work and lift with assistance of
4 another coworker. Any questions regarding this
5 matter, please call the office."

6 Q. Did you ask him to write this
7 letter?

8 A. No, he may have wrote it on his
9 own.

10 Q. I'm going to show you another
11 letter from Dr. Farricy dated January 26, 2004.
12 Have you ever seen this?

13 A. Yes.

14 MR. GRIGGS: Mark this as Exhibit
15 4.

16
17 (Exhibit 4, 1/26/04 Letter, marked)

18
19 Q. (By Mr. Griggs) Just read that
20 into the transcript record?

21 A. "Attention Ann Kendall, to whom it
22 may concern, Wendy Gauthier was seen in my
23 office today. It is my recommendation that she
24 be able to continue working and lifting with

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9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 caution. Any questions regarding this matter, 2 please call the office. Thank you." 3 Q. Did you ask Dr. Farricy to write 4 this letter? 5 A. Yes, I did. 6 Q. Why did you ask him to write this 7 letter? 8 A. Because when I requested light 9 duty, I was not granted light duty. And I was 10 told if I was unable to perform my job and 11 perform it the way I need to perform it, I can't 12 work. I remember telling him I need a note 13 because I can't go back to work without a note 14 stating that I'm able to do my job the way I can 15 perform up to the fullest duty. 16 Q. When did you first request light 17 duty, I'm little bit confused? 18 A. I know it was after I got injured 19 on the job he had requested light duty for me. 20 Q. That was after you got injured on 21 the job? 22 A. Yes. 23 Q. You got injured in April of 2004? 24 A. Yes, correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 go back and do my job. 2 Meanwhile I'm not getting paid. 3 I'm out, trying to get back to work and I'm not 4 getting paid. I'm trying to give her these 5 notes and she wouldn't accept these notes. I 6 finally went to him saying I need a note stating 7 that I'm able to go back to work and do my full 8 duties. 9 Q. Let's see if we can get the 10 chronology straight here. Your first day of 11 work was December 22, 2003; is that correct? 12 A. Correct. 13 Q. You had no restrictions at that 14 time with regard to lifting? 15 A. No. They suggested no heavy 16 lifting, but they didn't come out and say no 17 heavy lifting. 18 Q. Who suggested that? 19 A. Dr. Mietkiewicz. 20 Q. When did he say that you should 21 have no heavy lifting for the first time? 22 A. I don't know. 23 Q. Once again, on December 22nd, you 24 say you had no lifting restrictions; is that</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. We have three doctors now that talk 2 about lifting restrictions back in December and 3 January. 4 A. I believe she wanted those for her 5 records. 6 Q. Who wanted those? 7 A. Ann. 8 Q. Why did she want those for her 9 records? 10 A. Just to see how I was doing and if 11 I was able to perform my job. 12 Q. You said you asked Dr. Farricy for 13 Exhibits 3 and 4, those letters dated January 14 12th and January 27th? 15 A. Yeah, to give to her because she 16 was giving me a hard time. 17 Q. What do you mean she was giving you 18 a hard time? 19 A. Because I had brought a note in for 20 light duty, only she couldn't grant me light 21 duty and that there was no such thing as light 22 duty. So I kept going to my doctor's office 23 like I don't know how many times a week saying I 24 need a note, I need a note. And just to try to</p>	<p style="text-align: right;">Page 33</p> <p>1 correct? 2 A. Correct. 3 Q. And on December 22, 2003, you had 4 no other things that you weren't able to do; is 5 that correct? 6 A. Yes. 7 Q. Were you able to walk? 8 A. Yes. 9 Q. You were able to brush your teeth? 10 MR. SHEA: On December 22, 2003? 11 THE WITNESS: Yes. 12 Q. (By Mr. Griggs) You were able to 13 see? 14 A. Yes. 15 Q. Hear? 16 A. Yes, I was fine. 17 Q. Did you ever play any sport 18 growing up? 19 A. Yes. 20 Q. Any other activities you enjoyed? 21 A. Fishing, deep sea fishing. 22 Camping, swimming. I like the outdoors. 23 Q. As of December 22, 2003 although 24 you said at the time you were pregnant, you were</p>

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10 (Pages 34 to 37)

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<p>1 able to do those things; is that correct?</p> <p>2 A. No, I wouldn't swim.</p> <p>3 Q. You wouldn't?</p> <p>4 A. No, I wouldn't swim. Technically</p> <p>5 you are not supposed to swim when you are</p> <p>6 pregnant.</p> <p>7 Q. Were there any other hobbies or</p> <p>8 interests that you were not pursuing?</p> <p>9 A. No.</p> <p>10 Q. Or could not pursue?</p> <p>11 A. No.</p> <p>12 Q. On December 31st in Exhibit 2 Dr.</p> <p>13 Mietkiewicz is saying no heavy lifting. As of</p> <p>14 December 31, 2003, did you have lifting</p> <p>15 restrictions?</p> <p>16 A. That was the note Ann needed for me</p> <p>17 to get hired, I believe. She needed a note</p> <p>18 saying that I was able to do lifting. I believe</p> <p>19 that was from.</p> <p>20 Q. So the question was, did you have</p> <p>21 lifting restrictions as of December 31st, 2003?</p> <p>22 MR. SHEA: I think she's answered</p> <p>23 that it's a doctor that she thinks was used</p> <p>24 for an employment examination.</p>	<p>1 I'm referring to these two letters in January</p> <p>2 from Dr. Farricy were requested by you in</p> <p>3 connection with your request for light duty; is</p> <p>4 that correct?</p> <p>5 MR. SHEA: Objection.</p> <p>6 THE WITNESS: In January?</p> <p>7 Q. (By Mr. Griggs) Yes.</p> <p>8 A. No.</p> <p>9 Q. So these were not requested --</p> <p>10 A. No.</p> <p>11 Q. -- in connection with your request</p> <p>12 for light duty?</p> <p>13 A. No.</p> <p>14 Q. You did not request light duty in</p> <p>15 January?</p> <p>16 A. No, I did not.</p> <p>17 Q. It would follow then that you were</p> <p>18 not denied light duty until January of 2004?</p> <p>19 A. I didn't ask for light duty in</p> <p>20 January 2004. I asked for light duty in April.</p> <p>21 MR. SHEA: Your question assumes</p> <p>22 that she asked for it and she's saying she</p> <p>23 didn't ask for it.</p> <p>24 MR. GRIGGS: I understand it's a</p>
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<p>1 MR. GRIGGS: You are not</p> <p>2 testifying.</p> <p>3 MR. SHEA: She's answered. I don't</p> <p>4 want to have you ask her the same question</p> <p>5 twice. I have a problem with that.</p> <p>6 MR. GRIGGS: I have a problem with</p> <p>7 different answers that's why I have to ask</p> <p>8 them.</p> <p>9 MR. SHEA: You can go back in the</p> <p>10 record and get the answer.</p> <p>11 MR. GRIGGS: There's two different</p> <p>12 answers.</p> <p>13 MR. SHEA: I don't think so.</p> <p>14 Q. (By Mr. Griggs) Did you have any</p> <p>15 restrictions as of December 31, 2003?</p> <p>16 A. No. It says suggesting no heavy</p> <p>17 lifting. He didn't say I can't do heavy lifting.</p> <p>18 He's suggesting that I shouldn't be doing it.</p> <p>19 Q. Can you just read the last sentence</p> <p>20 of this once again?</p> <p>21 A. "She is 12 weeks pregnant and no</p> <p>22 heavy lifting is suggested."</p> <p>23 Q. Once again, Exhibits 3 and 4 you</p> <p>24 said were requested by you of Dr. Farricy and</p>	<p>1 double negative.</p> <p>2 Q. (By Mr. Griggs) You were not</p> <p>3 denied light duty in January of 2004?</p> <p>4 A. Correct.</p> <p>5 Q. Thank you.</p> <p>6 When did you first have</p> <p>7 complications from your pregnancy -- strike</p> <p>8 that.</p> <p>9 Did you have any symptoms that</p> <p>10 arose subsequent to your employment commencing</p> <p>11 at SunBridge?</p> <p>12 A. Yes.</p> <p>13 Q. What were those symptoms?</p> <p>14 A. I was vomiting, I had morning</p> <p>15 sickness all the time. My feet were swollen and</p> <p>16 my hands were swollen. It was rough.</p> <p>17 MR. SHEA: You are talking strictly</p> <p>18 related to the pregnancy.</p> <p>19 MR. GRIGGS: That's correct.</p> <p>20 Q. (By Mr. Griggs) You were talking</p> <p>21 about morning sickness, swollen feet?</p> <p>22 A. Yeah.</p> <p>23 Q. What else?</p> <p>24 MR. SHEA: Vomiting.</p>

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11 (Pages 38 to 41)

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<p>1 THE WITNESS: Vomiting.</p> <p>2 Q. (By Mr. Griggs) Did you ever</p> <p>3 request any change in your work duties or</p> <p>4 accommodations, if you will?</p> <p>5 A. Yes, I have.</p> <p>6 Q. With respect to the morning</p> <p>7 sickness symptoms like vomiting and swollen</p> <p>8 feet?</p> <p>9 A. The only accommodation that I had</p> <p>10 told Ann was that I might need to take some</p> <p>11 nights off because I had some early morning</p> <p>12 doctor's appointments and she told me I was</p> <p>13 unable to do that. Because it was too hard for</p> <p>14 me to stay up all night and stay up all day to</p> <p>15 go to my doctor's appointments. And I was</p> <p>16 denied those accommodations.</p> <p>17 Q. When you asked Ann Kendall for a</p> <p>18 day off or a night off so that you could attend</p> <p>19 a doctor's appointment?</p> <p>20 MR. SHEA: I think she said plural.</p> <p>21 Q. (By Mr. Griggs) When was the first</p> <p>22 time?</p> <p>23 MR. SHEA: If you don't remember</p> <p>24 exactly.</p>	<p>1 and I said okay.</p> <p>2 Q. Did you make any attempt to get</p> <p>3 somebody to cover a shift?</p> <p>4 A. I had. I had requested to switch</p> <p>5 with another person who also worked at</p> <p>6 Sandalwood.</p> <p>7 Q. Who was that?</p> <p>8 A. Lisa Franks.</p> <p>9 Q. What date was that?</p> <p>10 A. I want to say it was in April. I'm</p> <p>11 not sure what date.</p> <p>12 Q. Did you ever put a request to swap</p> <p>13 shifts in writing?</p> <p>14 A. No, it wasn't in writing, it was</p> <p>15 with the supervisor that was on duty.</p> <p>16 Q. Who was that?</p> <p>17 A. I believe her name was Donna. I</p> <p>18 don't remember.</p> <p>19 Q. You never made a request in writing</p> <p>20 to take a day off?</p> <p>21 A. No, that's not how we did it at</p> <p>22 Sandalwood. We switched along each other and</p> <p>23 people would just go and switch it on the time</p> <p>24 sheet with the 11:00 to 7:00 supervisor.</p>
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<p>1 THE WITNESS: I don't remember</p> <p>2 exactly dates.</p> <p>3 Q. (By Mr. Griggs) Do you remember</p> <p>4 rough dates?</p> <p>5 A. Yeah, I want to say it was maybe</p> <p>6 the 16th.</p> <p>7 Q. Maybe the what, I'm sorry?</p> <p>8 A. I remember the date, maybe like the</p> <p>9 16th, I don't know if it was March or April. I</p> <p>10 don't remember. There was a few of them in</p> <p>11 there that I needed off for doctor's</p> <p>12 appointment.</p> <p>13 Q. Your testimony is that you asked</p> <p>14 Ann Kendall if you could take a shift off to go</p> <p>15 to a doctor's appointment the following day and</p> <p>16 were denied?</p> <p>17 A. Yes.</p> <p>18 Q. How far in advance is your</p> <p>19 testimony that you allegedly told her this?</p> <p>20 A. Like a couple weeks in advance.</p> <p>21 Q. Did she give you a reason for</p> <p>22 reportedly denying this request?</p> <p>23 A. No, she said I can't accommodate it</p> <p>24 and you'll just have to go when you have to go</p>	<p>1 Q. Who was the 11:00 to 7:00</p> <p>2 supervisor?</p> <p>3 A. They didn't actually have an 11:00</p> <p>4 to 7:00 supervisor, they were using nurses for</p> <p>5 supervisors and they were using agency nurses</p> <p>6 for supervisors.</p> <p>7 Q. So you would ask an agency nurse</p> <p>8 that you say was operating as a supervisor if</p> <p>9 you could swap shifts?</p> <p>10 A. Yes.</p> <p>11 Q. For a subsequent day, weeks ahead?</p> <p>12 A. No, it was that night. We had</p> <p>13 switched. We had done it that night. We were</p> <p>14 both on. We went up to the supervisor, she was</p> <p>15 supposed to switch it in the book.</p> <p>16 Q. Your testimony is that you talked</p> <p>17 to Lisa Franks one night because you both worked</p> <p>18 11:00 to 7:00 asking to swap shifts?</p> <p>19 A. For the following night.</p> <p>20 Q. For the following night. This is</p> <p>21 the very next night?</p> <p>22 A. Yes.</p> <p>23 Q. You simply asked this supervisor,</p> <p>24 do you recall her name beyond Donna?</p>

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12 (Pages 42 to 45)

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<p>1 A. I think it was Donna. I'm not 2 sure. 3 Q. Do you recall calling in sick a 4 number of times while you were employed at 5 SunBridge? 6 A. Yes, I did. 7 Q. Do you recall roughly how many 8 times you called out sick? 9 A. Maybe nine, 10. 10 Q. Did you ever receive a written 11 warning regarding your attendance? 12 A. Yes. 13 Q. Did you ever not show up for a 14 shift without calling? 15 A. No. 16 Q. On January 27th, did you not call 17 in and not show up for work? 18 MR. SHEA: She just said she never 19 did that. 20 THE WITNESS: No. 21 MR. GRIGGS: I'll mark this 22 document entitled the 2004 Attendance 23 Controller as Exhibit 5. 24</p>	<p>1 days you called in sick or anything with regard 2 to your attendance? 3 A. No, I don't. 4 Q. Do you have any writings or any 5 notes, any personal notes that you've taken with 6 regard to the matters in this case? 7 A. Yes, I have. 8 Q. Do any of these writings describe 9 any injury that you have ever had? 10 A. I don't understand what you are 11 asking. What do you mean the writing? 12 MR. SHEA: I'll object for the 13 record. 14 Q. (By Mr. Griggs) You just said that 15 you wrote some notes? 16 A. Yes, I have. 17 MR. SHEA: Did she write any notes 18 about injury? 19 Q. (By Mr. Shea) My next question was 20 did you write any note about any injuries you 21 suffered on the job? 22 A. No, I just remember in my head what 23 happened that night. 24 Q. The night of January 27th, 2004?</p>
Page 43	Page 45
<p>1 (Exhibit 5, 2004 Attendance 2 Controller, marked) 3 4 Q. (By Mr. Griggs) I'll show you a 5 document entitled 2004 Attendance/Controller 6 we've marked as Exhibit 5. Then I'll show you 7 the month of January, can you read what's in the 8 box there? 9 A. It says no call/no show. 10 Q. What else does it say if you can 11 read it? 12 A. In a.m., I don't work in the a.m. 13 I worked 11:00 to 7:00 shift. 14 Q. Does it say called in a.m.? 15 A. Yes. 16 Q. Do you have any recollection of 17 that date? 18 A. No, I don't. 19 Q. Your testimony is that you've never 20 been a no call/no show? 21 A. Correct. 22 Q. This document is false? 23 A. Yes. 24 Q. Did you have written anywhere what</p>	<p>1 A. 28th. 2 Q. What does that note say? 3 A. I was kicked in the abdomen by a 4 patient during care. 5 Q. I'm sorry, I said January. 6 A. It's actually April 28th I got 7 injured on the job. 8 Q. You are referring to that day? 9 A. Yes. 10 MR. SHEA: Can we take a quick 11 break? 12 MR. GRIGGS: Sure. 13 14 (A recess was taken) 15 16 MR. GRIGGS: Back on the record. 17 Q. (By Mr. Griggs) While you were 18 employed at SunBridge, did you ever complain to 19 anybody that you thought you were being 20 discriminated against? 21 A. No. 22 Q. Were you ever retaliated against 23 for saying that you were pregnant? 24 A. Yes.</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 Q. When?</p> <p>2 A. After I was injured on the job.</p> <p>3 Q. And by whom?</p> <p>4 A. Because I had -- I felt like they</p> <p>5 retaliated against me because I missed a lot of</p> <p>6 time from work due to my pregnancy, they wrote</p> <p>7 me up. They got me for a no call/no show which</p> <p>8 I never committed. I was sick all the time. I</p> <p>9 needed light duty, was refused it.</p> <p>10 Q. Did you ever request light duty in</p> <p>11 writing?</p> <p>12 A. Yes, my doctor provided a note.</p> <p>13 Q. Do you have a copy of that?</p> <p>14 A. No, I do not.</p> <p>15 Q. What doctor was that?</p> <p>16 A. Dr. Farricy.</p> <p>17 Q. What was the date that he wrote</p> <p>18 that letter?</p> <p>19 MR. SHEA: You don't have to guess.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 MR. SHEA: We can get the medical</p> <p>22 records and clear up these dates, but don't</p> <p>23 speculate.</p> <p>24 Q. (By Mr. Griggs) Did Dr. Farricy</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: No.</p> <p>2 Q. (By Mr. Griggs) Did you ever file</p> <p>3 for unemployment benefits after you were</p> <p>4 terminated from SunBridge?</p> <p>5 A. Yes, I tried, I was denied.</p> <p>6 Q. Why were you denied?</p> <p>7 A. I had called unemployment.</p> <p>8 MR. SHEA: Objection. For the</p> <p>9 record, it shouldn't even be introduced in</p> <p>10 a civil procedure.</p> <p>11 Q. (By Mr. Griggs) Why were you</p> <p>12 denied?</p> <p>13 A. Because they told me in the state</p> <p>14 of Massachusetts if a woman is pregnant then</p> <p>15 they are unable to collect. And I was</p> <p>16 terminated, so I didn't even have a chance.</p> <p>17 They told me I was unable to collect anything.</p> <p>18 Q. Do you recall filing a charge with</p> <p>19 the Mass Commission Against Discrimination?</p> <p>20 A. I had called them and they told me</p> <p>21 they felt that I didn't have a good enough case,</p> <p>22 I'd have to pay for it. I didn't go that route.</p> <p>23 MR. SHEA: Other than in this</p> <p>24 case.</p>
<p style="text-align: right;">Page 47</p> <p>1 write this letter after the incident that you</p> <p>2 were injured?</p> <p>3 A. Yes.</p> <p>4 Q. Was it at your request?</p> <p>5 A. No, it was at his request.</p> <p>6 Q. Do you know who he sent this letter</p> <p>7 to?</p> <p>8 A. He sent it to Ann.</p> <p>9 Q. Do you know what it said?</p> <p>10 A. It said that Wendy Gauthier needs</p> <p>11 to be on light duty, no lifting, no rolling</p> <p>12 heavy patients over.</p> <p>13 Q. Did you request to move to the day</p> <p>14 shift?</p> <p>15 A. No, did I not.</p> <p>16 Q. Did you request to move to any</p> <p>17 other shift?</p> <p>18 A. No.</p> <p>19 Q. Were there any other instances</p> <p>20 where anybody retaliated against you at</p> <p>21 SunBridge because you said you were pregnant?</p> <p>22 MR. SHEA: Other than what she's</p> <p>23 already testified to?</p> <p>24 MR. GRIGGS: Correct.</p>	<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Right.</p> <p>2 Q. (By Mr. Griggs) Your answer is</p> <p>3 that you never filed a claim with the</p> <p>4 Massachusetts Commission Against Discrimination?</p> <p>5 A. I had called them and talked to</p> <p>6 them.</p> <p>7 Q. You're saying you did not file a</p> <p>8 charge of discrimination with the Mass</p> <p>9 Commission Against Discrimination?</p> <p>10 MR. SHEA: I'll represent she did.</p> <p>11 MR. GRIGGS: You are not</p> <p>12 testifying.</p> <p>13 MR. SHEA: I filed it for her.</p> <p>14 THE WITNESS: Yes. This was</p> <p>15 before I went to the lawyer and got a</p> <p>16 lawyer. This was on my own. This was</p> <p>17 after I had called unemployment, I had</p> <p>18 called them on my own and then I got myself</p> <p>19 a lawyer and I went this route.</p> <p>20 MR. GRIGGS: I'm going to introduce</p> <p>21 a three-page document as Exhibit 6.</p> <p>22</p> <p>23 (Exhibit 7 MCAD Complaint, marked)</p> <p>24</p>

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WENDY GAUTHIER**February 8, 2007**

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 Q. (By Mr. Griggs) Charge of 2 discrimination, I'm just going to walk through a 3 few of these things here on page one. I'll 4 represent to you -- 5 MR. SHEA: Do you want to show her 6 the document? 7 MR. GRIGGS: Sure. 8 Q. (By Mr. Griggs) Have you ever seen 9 this document? 10 MR. SHEA: Take your time and look 11 through it. 12 Q. (By Mr. Griggs) Do you have a 13 handicap? 14 A. Now or then? 15 Q. Do you have a handicap now? 16 A. No. 17 Q. Have you ever had a handicap? 18 A. Yes. 19 Q. What was that handicap? 20 A. When I was pregnant, being 21 pregnant. I had complications due to my 22 pregnancy. 23 Q. What was that handicap? 24 MR. SHEA: Objection. She said</p>	<p>1 complications of being pregnant was the 2 previous question? 3 Q. (By Mr. Griggs) Did being pregnant 4 prevent you from pursuing any life activities? 5 A. Being pregnant? 6 Q. Correct. 7 A. Yes. 8 Q. What life activities did it prevent 9 you from? 10 A. I was unable to clean my own house. 11 I couldn't do any lifting. 12 Q. Why couldn't you clean your own 13 house? 14 A. Because I couldn't move. My feet 15 were swollen. I had to wear sandals, I couldn't 16 wear regular shoes. Even sometimes sandals I 17 couldn't wear because my toes would go right 18 through. They were so tight I couldn't get them 19 off. 20 Q. Have you ever filed a workman's 21 comp claim? 22 MR. SHEA: She, herself? 23 THE WITNESS: No. I was never 24 given a workman's comp claim to file.</p>
Page 51	Page 53
<p>1 complications due to her pregnancy. 2 THE WITNESS: I had swollen feet, 3 my hands were swollen, I was sick, I had 4 morning sickness every night through the 5 whole night. 6 MR. SHEA: There's case law on 7 that. Go ahead. 8 MR. GRIGGS: There is, we can talk 9 about that. 10 Q. (By Mr. Griggs) Did this prevent 11 you from doing anything? 12 A. I felt like, yeah, because they 13 felt it prevented me from doing my job the way 14 that I'm supposed to do my job, but I felt that 15 I followed all the regulations and the rules and 16 tried to do my job to the best of my ability at 17 that time. 18 MR. SHEA: You mean doing anything 19 at all or life activities, which one are 20 you talking about? I think she's confused. 21 Q. (By Mr. Griggs) Either. Let's 22 talk about life activities. Does being pregnant 23 prevent you from -- 24 MR. SHEA: Does being pregnant or</p>	<p>1 Q. (By Mr. Griggs) You never filed a 2 workman's comp claim? 3 MR. SHEA: She, herself or the 4 employer? 5 Q. (By Mr. Griggs) You, yourself. 6 A. No. 7 Q. Did you ever request in writing 8 that a workman's comp claim be filed on your 9 behalf? 10 A. No. 11 MR. GRIGGS: I guess we'll suspend 12 and I'll ask for those records that we've 13 been seeking. 14 MR. SHEA: Sure we can clear that 15 up. 16 17 (Deposition concluded at 4:59 p.m.) 18 19 20 21 22 23 24</p>

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WENDY GAUTHIER
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15 (Pages 54 to 57)

Page 54	Page 56
<p>1 I, ELISABETH ZAHARIADIS, a Notary Public</p> <p>2 in and for the Commonwealth of Massachusetts, do</p> <p>3 hereby certify that WENDY GAUTHIER appeared</p> <p>4 before me, satisfactorily identified herself, on</p> <p>5 the 8th day of February, 2007, at Worcester,</p> <p>6 Massachusetts, and was by me duly sworn to</p> <p>7 testify to the truth and nothing but the truth</p> <p>8 as to her knowledge touching and concerning the</p> <p>9 matters in controversy in this cause; that she</p> <p>10 was thereupon examined upon her oath and said</p> <p>11 examination reduced to writing by me; and that</p> <p>12 the statement is a true record of the testimony</p> <p>13 given by the witness, to the best of my</p> <p>14 knowledge and ability.</p> <p>15 I further certify that I am not a relative</p> <p>16 or employee of counsel/attorney for any of the</p> <p>17 parties, nor a relative or employee of such</p> <p>18 parties, nor am I financially interested in the</p> <p>19 outcome of the action.</p> <p>20 WITNESS MY HAND this 3rd day of March</p> <p>21 2007.</p> <p>22</p> <p>23 Elisabeth Zahariadis My Commission expires:</p> <p>24 Notary Public October 5, 2012</p>	<p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3</p> <p>4 *****</p> <p>5 WENDY GAUTHIER, *</p> <p>6 Plaintiff *</p> <p>7 vs. *No.: 05cv40119-FDS</p> <p>8 SUNHEALTH SPECIALTY *</p> <p>9 SERVICES, INC. and SUNBRIDGE*</p> <p>10 HEALTHCARE CORPORATION, *</p> <p>11 Defendants *</p> <p>12 *****</p> <p>13</p> <p>14</p> <p>15 I, WENDY GAUTHIER, do hereby certify,</p> <p>16 under the pains and penalties of perjury, that</p> <p>17 the foregoing testimony is true and accurate, to</p> <p>18 the best of my knowledge and belief.</p> <p>19 WITNESS MY HAND, this day of</p> <p>20 2007.</p> <p>21</p> <p>22 _____</p> <p>23 WENDY GAUTHIER</p> <p>24 EZ</p>
Page 55	Page 57
<p>1 Today's date: March 3, 2007</p> <p>2 To: K. Scott Griggs, Esq.</p> <p>3 Copied to: Michael O. Shea, Esq.</p> <p>4 From: Elisabeth Zahariadis</p> <p>5 Deposition of: Wendy Gauthier</p> <p>6 Taken: February 8, 2007</p> <p>7 Action: WENDY GAUTHIER</p> <p>8 Vs. SUNHEALTH SPECIALTY</p> <p>9 SERVICES, INC., ET AL.</p> <p>10</p> <p>11</p> <p>12 Enclosed is a copy of Ms. Gauthier's</p> <p>13 deposition. Pursuant to the Rules of Civil</p> <p>14 Procedure, Ms. Gauthier has thirty days to sign</p> <p>15 the deposition from today's date.</p> <p>16 Please have Ms. Gauthier sign the enclosed</p> <p>17 signature page. If there are any errors, please</p> <p>18 have her mark the page, line and error on the</p> <p>19 enclosed correction sheet. She should not mark</p> <p>20 the transcript itself. This addendum should be</p> <p>21 forwarded to all interested parties.</p> <p>22 Thank you for your cooperation in this</p> <p>23 matter.</p> <p>24</p>	<p>1 CORRECTION SHEET</p> <p>2 DEPONENT: Wendy Gauthier</p> <p>3 CASE: Gauthier V. Sunhealth Specialty Services</p> <p>4 DATE TAKEN: February 8, 2007</p> <p>5 *****</p> <p>6 PAGE/ LINE/ CHANGE OR CORRECTION AND REASON</p> <p>7 *****</p> <p>8 ____/____/____</p> <p>9 ____/____/____</p> <p>10 ____/____/____</p> <p>11 ____/____/____</p> <p>12 ____/____/____</p> <p>13 ____/____/____</p> <p>14 ____/____/____</p> <p>15 ____/____/____</p> <p>16 ____/____/____</p> <p>17 ____/____/____</p> <p>18 ____/____/____</p> <p>19 ____/____/____</p> <p>20 ____/____/____</p> <p>21 ____/____/____</p> <p>22 ____/____/____</p> <p>23 ____/____/____</p> <p>24 ____/____/____</p>

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EXHIBIT 2

WENDY GAUTHIER, VOLUME II

March 5, 2007

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 CIVIL ACTION NO.: 05CV40119-FDS
4

5 *****

6 WENDY GAUTHIER, *

7 Plaintiff, *

8 Vs. *

9 SUNHEALTH SPECIALTY *

10 SERVICES, INC., and *

11 SUNBRIDGE HEALTHCARE *

12 CORPORATION, *

13 Defendants. *

14 *****

15

16 DEPOSITION OF: WENDY GAUTHIER

17

18 CATUOGNO COURT REPORTING

19 446 Main Street, 18th Floor

20 Worcester, Massachusetts

21 March 5, 2007 10:15 a.m.

22

23 Dawn L. Halcisak

24 Certified Shorthand Reporter

CATUOGNO COURT REPORTING SERVICES

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WENDY GAUTHIER, VOLUME II

March 5, 2007

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICES OF MICHAEL O. SHEA</p> <p>5 451 Main Street</p> <p>6 Wilbraham, MA 01608-2302</p> <p>7 (413) 596-8005 FAX: (413) 596-8095</p> <p>8 BY: MICHAEL O. SHEA, ESQUIRE</p> <p>9 E-mail: (None provided)</p> <p>10</p> <p>11 Representing the Defendant:</p> <p>12 LAW OFFICES OF LAWSON & WEITZEN, L.L.P.</p> <p>13 88 Black Falcon Avenue</p> <p>14 Boston, MA 02210</p> <p>15 (617) 439-4990 FAX: (617) 439-3987</p> <p>16 BY: K. SCOTT GRIGGS, ESQUIRE</p> <p>17 E-mail: SGRIGGS@LAWSON-WEITZEN.COM</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 MR. GRIGGS: Okay. The usual</p> <p>2 stipulations; all objections, except as to</p> <p>3 form, are reserved until the time of</p> <p>4 trial, read and sign, 30 days.</p> <p>5 THE REPORTER: Waive the Notary?</p> <p>6 MR. GRIGGS: Waive the notary after</p> <p>7 30 days, the transcript will be deemed</p> <p>8 accurate.</p> <p>9</p> <p>10 WENDY GAUTHIER, Deponent, having first</p> <p>11 been satisfactorily identified and duly sworn,</p> <p>12 deposes and states as follows:</p> <p>13</p> <p>14 THE REPORTER: Would you, please,</p> <p>15 state your name, ma'am, spelling your last</p> <p>16 name for the record?</p> <p>17</p> <p>18 THE WITNESS: Wendy Gauthier,</p> <p>19 G-A-U-T-H-I-E-R.</p> <p>20</p> <p>21</p> <p>22 DIRECT EXAMINATION BY MR. GRIGGS:</p> <p>23</p> <p>24 Q. Good morning, Miss Gauthier.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: WENDY GAUTHIER</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Griggs 4</p> <p>7 Mr. Shea 70</p> <p>8</p> <p>9 FURTHER EXAMINATION BY: PAGE:</p> <p>10 Mr. Griggs 72</p> <p>11</p> <p>12</p> <p>13 EXHIBIT: PAGE:</p> <p>14 Exhibit 1, Medical Records.....11</p> <p>15 Exhibit 2, Incident Report.....27</p> <p>16 Exhibit 3, Letter, dated 01/12/04.....38</p> <p>17 Exhibit 4, Letter, dated 01/26/04.....38</p> <p>18</p> <p>19 (Exhibits retained by Reporter)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 Thanks for coming back. We are resuming our</p> <p>2 deposition from last month, when we ran out of</p> <p>3 time. I apologize if I ask anything that was</p> <p>4 repeated, that is going to be repeated from the</p> <p>5 last time because we don't have the transcript</p> <p>6 and so I may touch base on a couple of things</p> <p>7 that we already talked about, but that's not my</p> <p>8 desire, it's just to cover all the bases here.</p> <p>9 A. Okay.</p> <p>10 Q. Last time you were talking about</p> <p>11 when you came to seek employment at SunBridge.</p> <p>12 Do you remember the date that you did seek</p> <p>13 employment at SunBridge?</p> <p>14 A. I -- December, 2003.</p> <p>15 Q. And who did you speak to?</p> <p>16 A. I spoke to Ann Kendall.</p> <p>17 Q. And when you were hired, did she</p> <p>18 ask you about your ability to perform the job</p> <p>19 functions of a certified nursing assistant?</p> <p>20 A. Yes.</p> <p>21 Q. And did you tell her you were able</p> <p>22 to perform those?</p> <p>23 A. Yes.</p> <p>24 Q. And were you able to perform those?</p>

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3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. Did you tell her, at that time,</p> <p>3 that you were pregnant?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Did you tell her how many months</p> <p>6 you were pregnant?</p> <p>7 A. Yes, I did.</p> <p>8 Q. And that was in the initial</p> <p>9 conversation; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. And did you tell her when you</p> <p>12 expected to take maternity leave?</p> <p>13 MR. SHEA: I think we are covering</p> <p>14 the same turf, and she's exhausted her</p> <p>15 memory, I think, about that conversation.</p> <p>16 MR. GRIGGS: We'll just hold for a</p> <p>17 sec. I don't have a transcript from the</p> <p>18 last time either, so we're just going to</p> <p>19 run through the bases. I'm not looking</p> <p>20 to -- puzzle over it.</p> <p>21 MR. SHEA: All right. I just don't</p> <p>22 want to go over old turf.</p> <p>23 MR. GRIGGS: Well, we may need to</p> <p>24 do that just a little bit to get our</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. SHEA: Did she remember in a</p> <p>2 month from then, in December?</p> <p>3 Q. (By Mr. Griggs) In December of</p> <p>4 2003, could you have predicted within a 30-day</p> <p>5 time frame, roughly, when you expected to say --</p> <p>6 give birth and take maternity leave?</p> <p>7 MR. SHEA: Objection.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: No, not at that time.</p> <p>10 Q. (By Mr. Griggs) Did you plan to</p> <p>11 take maternity leave when your daughter was</p> <p>12 born?</p> <p>13 A. Well, I was planning on working up</p> <p>14 until I could no longer be able to work anymore,</p> <p>15 and then I was going to give them a notice to</p> <p>16 say, I'm going out, and I was willing to come</p> <p>17 back to work after the baby was born. That was</p> <p>18 my intention.</p> <p>19 Q. And how long after your baby was</p> <p>20 born did you expect that you would come back to</p> <p>21 work?</p> <p>22 A. I didn't. I was -- I was fired for</p> <p>23 a "no call/no show" --</p> <p>24 Q. The question was --</p>
<p style="text-align: right;">Page 7</p> <p>1 context together.</p> <p>2 Q. (By Mr. Griggs) Once again, in that</p> <p>3 conversation, did you tell her roughly when you</p> <p>4 believed you were going to take maternity leave?</p> <p>5 A. I believe I didn't bring it up at</p> <p>6 that time because I wasn't sure myself.</p> <p>7 Q. But you did bring up -- you did</p> <p>8 bring up the fact that you were pregnant, right?</p> <p>9 A. Yes.</p> <p>10 Q. But you did not talk about when you</p> <p>11 expected to take maternity leave?</p> <p>12 A. No, no.</p> <p>13 Q. Did you know within, say, a 30-day</p> <p>14 waiver of time as to when you expected that you</p> <p>15 would probably take maternity leave?</p> <p>16 At the time that you were speaking</p> <p>17 with Miss Kendall in December of 2002?</p> <p>18 MR. SHEA: Did she know within a</p> <p>19 month from then --</p> <p>20 THE WITNESS: No. I --</p> <p>21 THE REPORTER: Honey, you have to</p> <p>22 wait, just until the attorneys are done.</p> <p>23 THE WITNESS: Okay.</p> <p>24 THE REPORTER: That's okay.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. -- that I never -- that I never</p> <p>2 performed a "no call/no show."</p> <p>3 Q. The question I asked was: When you</p> <p>4 took maternity leave, when you had planned to</p> <p>5 acknowledge that you were returning prior to</p> <p>6 your requesting maternity leave, but at some</p> <p>7 point during your employment, you foresaw the</p> <p>8 need to take maternity leave, right?</p> <p>9 A. Yes.</p> <p>10 Q. You foresaw that, at some point,</p> <p>11 you would give birth and enjoy your time with</p> <p>12 your newborn daughter, correct?</p> <p>13 A. Right.</p> <p>14 Q. So you anticipated taking some time</p> <p>15 off, as you said, shortly before her birth or</p> <p>16 whatever time you felt you were no longer able</p> <p>17 to work --</p> <p>18 MR. SHEA: Objection.</p> <p>19 Q. (By Mr. Griggs) -- until when?</p> <p>20 How long did you intend to take</p> <p>21 maternity leave for?</p> <p>22 MR. SHEA: Objection.</p> <p>23 THE WITNESS: Well, maternity leave</p> <p>24 is only -- it's usually 90 days. Any</p>

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4 (Pages 10 to 13)

Page 10	Page 12
<p>1 place usually gives you 90 days, unless 2 you have complications. 3 MR. SHEA: Don't speculate. He's 4 just asking you if there's -- correct me 5 if I'm wrong -- if there was some point 6 while she was working at SunBridge? 7 MR. GRIGGS: You can object to the 8 point of the question. I'll have to -- 9 MR. SHEA: I don't see -- if I'm 10 confused about the question. I think she 11 is. 12 MR. GRIGGS: Okay. Let me rephrase 13 the question. You can object to the form. 14 I'll duly acknowledge if it's a complex 15 question. I'm not intending to create 16 complex ambiguous questions. 17 MR. SHEA: Okay. All right. 18 Q. (By Mr. Griggs) However, I'm 19 trying to formulate a question that asks how 20 long you intended to take maternity leave and 21 how much maternity leave did you intend to take? 22 MR. SHEA: When? When? 23 MR. GRIGGS: I'm going to ask the 24 question.</p>	<p>1 of February 22, 2007? 2 Thank you. 3 Q. (By Mr. Griggs) When you started 4 working at SunBridge, what was your 5 understanding as to how many months pregnant you 6 were at that time? 7 A. When I started working at 8 SunBridge? 9 Q. Yes. 10 A. I was, approximately, about four 11 months pregnant. 12 Q. And how was your pregnancy going at 13 that time? 14 A. At that time, it was going okay. 15 Q. And you were able to walk around? 16 A. Yes. 17 Q. You were able to turn and 18 reposition patients? 19 A. Yes. 20 Q. You were able to assist patients 21 and transfers to the bathroom? 22 A. Yes. 23 Q. You were able to ambulate 24 residents?</p>
Page 11	Page 13
<p>1 Q. (By Mr. Griggs) And if you can 2 answer it, go ahead and answer it. 3 A. The normal 90-day maternity leave. 4 I believe it's 90 days. 5 Q. (By Mr. Griggs) So you intended at 6 some point, you would take 90-days' maternity 7 leave, correct? 8 A. Yes. But I had no benefits, so 9 I -- 10 Q. Well, I didn't ask about that, but 11 I appreciate it. 12 A. Okay. 13 MR. GRIGGS: I'm going to mark as 14 Exhibit 1 a package of documents, which is 15 30 pages long, which I'll refer to as the 16 medical records from -- I'll just refer to 17 it as "medical records." 18 19 (Exhibit 1, Medical Records, marked 20 for identification) 21 22 MR. SHEA: Can we just say for the 23 record that those are medical records 24 produced by my office under a cover letter</p>	<p>1 A. Yes. 2 Q. So, in short, you were able to 3 fulfill your job functions as a certified 4 nursing assistant; is that correct? 5 A. Yes, when I first started there in 6 December. I didn't start receiving 7 complications until January. 8 Q. Well, let's talk about the 9 complications of which you speak of. What kind 10 of complications? 11 A. I had morning sickness all the 12 time -- 13 Q. Now, when you say "all the time" -- 14 MR. SHEA: No, let her finish. Let 15 her finish her answer. 16 THE WITNESS: I had swollen feet. 17 I had to use the bathroom more frequently. 18 Q. (By Mr. Griggs) Did you ever 19 receive medication for your morning sickness? 20 A. No, I did not. 21 Q. When you said you had morning 22 sickness all the time, what do you mean by "all 23 the time" exactly? 24 A. It wasn't -- it was just -- it</p>

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5 (Pages 14 to 17)

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<p>1 would just come on all of a sudden. 2 Q. So you would vomit every day? 3 A. Yes. 4 Q. How many times a day? 5 A. I would say, like, 20 maybe. That 6 was throughout the 24-hour period. It could be 7 more. 8 Q. And when did your frequent bouts of 9 morning sickness start? 10 A. From January, all the way until 11 July, up until my pregnancy. 12 MR. SHEA: You mean delivery. 13 THE WITNESS: Delivery, yeah. I'm 14 sorry. 15 Q. (By Mr. Griggs) Did you have 16 morning sickness on the job at SunBridge? 17 A. Yes, I had. 18 Q. Did you ever find you could not 19 perform your job functions at SunBridge because 20 of this morning sickness? 21 A. On occasion. 22 Q. And when were those occasions? Can 23 you name one occasion? 24 A. It was just -- it was just all the</p>	<p>1 specific instance; she gave you one. And 2 now you're asking her again, "were there 3 other times?" You asked her this question 4 already -- asked and answered. 5 MR. GRIGGS: Okay. Well, I'll 6 object to your speaking objections, and 7 there are no speaking objections. 8 MR. SHEA: I'm going to give those 9 objections every time you ask her the same 10 questions over and over again, because -- 11 MR. GRIGGS: I'm not asking the 12 same question. I'm asking for the next 13 one. 14 MR. SHEA: Are you asking her now 15 whether there's another instance, specific 16 instance, that she recalls? Is that what 17 you're asking her -- because I'm confused. 18 Or are you asking a different question? 19 MR. GRIGGS: Nope. Let me ask the 20 question -- 21 MR. SHEA: Sure. 22 MR. GRIGGS: -- and I'd appreciate 23 it if you wouldn't continue -- not to 24 interrupt me --</p>
Page 15	Page 17
<p>1 time. I -- it was throughout my whole 2 pregnancy. I -- 3 Q. Well, the question that's posed, 4 I'll repeat it again and I'll shorten it, if you 5 will: Can you name or describe an instance 6 where you were unable to perform your job 7 functions at SunBridge as a CNA because of this 8 morning sickness? 9 A. Well, yeah. I had -- I had asked 10 Lisa Franks to switch with me because I was sick 11 at work -- 12 Q. And -- 13 A. -- and I had asked her to work the 14 following night. 15 Q. And when was that? 16 A. I believe that was in May, 2004. 17 Q. Was there any other times you were 18 unable to perform your job functions as a CNA 19 because of morning sickness? 20 MR. SHEA: That she specifically 21 recalls? She said, "throughout." I'll 22 object, for the record, this has been 23 asked and answered. She's said several 24 times "throughout." You asked her about a</p>	<p>1 MR. SHEA: Me too. Me too. 2 Q. (By Mr. Griggs) You just answered 3 that there was a time in May of 2004 when -- 4 A. Well, that's -- 5 THE REPORTER: Wait, let him finish 6 the question, okay? 7 Q. (By Mr. Griggs) You just testified 8 that in May of 2004, there was a time when you 9 could not perform the essential job functions of 10 your position, as a CNA, because of morning 11 sickness, and that you described as a time when 12 you had asked Lisa Franks to then take your next 13 shift, because I'm presuming you felt bad; is 14 that correct? 15 A. Yes. 16 THE REPORTER: That she felt "bad"? 17 Q. (By Mr. Griggs) Is that a fair 18 summary? 19 THE WITNESS: Yes. 20 And, like I said, I was sick 21 throughout my whole pregnancy. I was even 22 sick in the labor room, if you want to 23 know that. 24 Q. (By Mr. Griggs) Now, in May, 2004,</p>

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6 (Pages 18 to 21)

Page 18	Page 20
<p>1 was that the first time that you felt you were 2 unable to perform your job functions? 3 A. No, it was in January. In the 4 beginning of January. And, like I said, 5 beginning of January throughout my pregnancy. 6 Q. When was the first time that you 7 can recall that you were prevented from 8 performing the essential job functions as your 9 position as a CNA because of morning sickness? 10 A. I'd say January, 2004, because 11 that's when it started. 12 Q. In January, 2004, and you 13 discovered that you -- that you were unable to 14 perform the essential job functions of your 15 position as a CNA because of morning sickness, 16 who did you tell about that? 17 A. Who did I tell about that? The day 18 that I was unable to come to work, I called in. 19 I told the 3-to-11 supervisor. 20 Q. And who was that? 21 A. I don't even remember. They don't 22 really have supervisors. They were using 23 agencies for supervisors, so they had anybody 24 come in and out. It's hard to keep track of</p>	<p>1 sickness to your knowledge? 2 MR. SHEA: Do you want her to go 3 through all the records? 4 MR. GRIGGS: Sure, if it refreshes 5 her memory. 6 MR. SHEA: Objection for the 7 record. 8 You may answer that. 9 THE WITNESS: (Witness viewing 10 document) I don't see anything in here 11 about that. 12 MR. GRIGGS: So you don't recall? 13 MR. SHEA: Well, finish looking, 14 just to be sure. 15 THE WITNESS: Okay. 16 (Witness viewing document) I can't 17 read that (indicating). 18 MR. GRIGGS: Nor can I, don't 19 worry. 20 MR. SHEA: There are pages you 21 can't read? 22 THE WITNESS: Yeah. 23 24 (Brief pause)</p>
Page 19	Page 21
<p>1 everybody. 2 Q. Now, this morning sickness, aside 3 from making you vomit frequently, did it stop 4 you from going shopping? 5 A. Yes. It stopped me from doing the 6 things I really enjoy doing. I couldn't clean 7 at home. I had to put my feet up, because my 8 feet were so swollen. 9 Q. Did you ever seek treatment for 10 this morning sickness? I already asked if you 11 took medication you said no; is that correct? 12 A. Correct. 13 Q. Did you ever seek any other type of 14 treatment? 15 A. No. I just went to the doctor's 16 office and they just told me it's common and it 17 happens, and it was something I'd have to deal 18 with. 19 Q. Can you show me anywhere in this 20 set of records that references -- did you ever 21 complain to your doctor about your morning 22 sickness? I believe you just said you did. 23 Did he ever give you any written 24 advice, or make any diagnosis about this morning</p>	<p>1 2 THE WITNESS: I don't see anything 3 in here about that. I can't understand 4 his writing. 5 Q. (By Mr. Griggs) So in the records 6 that you just reviewed, and in your own 7 recollection, you never received any medication 8 or treatment for your morning sickness; is that 9 correct? 10 MR. SHEA: Objection. 11 THE WITNESS: Correct. 12 Q. (By Mr. Griggs) And you had just 13 said that you also asked your physician about 14 swollen feet. Did you ask him about your 15 swollen feet? 16 A. Yes, he was aware of that. 17 Q. And when you asked him about the 18 swollen feet and the morning sickness, what did 19 he say about that? 20 A. He didn't really say too much about 21 the morning sickness, because it happens with 22 pregnancy. And the swollen feet he just asked 23 me to keep my feet up. 24 Q. How often?</p>

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<p>1 A. Whenever possible, as often as 2 possible. 3 Q. All right. Let's talk for a minute 4 about the first time when we began to touch on 5 this last time -- the first time that you ever 6 believe or that you believed that you were 7 subjected to discrimination at SunBridge, when 8 was the first time? 9 A. The first time was when I had 10 complications from my pregnancy. 11 Q. And when was that? 12 A. Like I said, it was from January 13 to -- through May. 14 Q. And can you describe that first act 15 of discrimination? Who committed this act of 16 discrimination? 17 A. I believe SunBridge did. I had 18 asked for accommodations, and I received no 19 accommodations. 20 Q. When did you asked for 21 accommodations? 22 MR. SHEA: Let her -- 23 Are you done with your answer? 24 I want you -- I don't want you to</p>	<p>1 questions that are going to clarify it -- 2 MR. SHEA: I'm going to say "It's 3 been asked and answered" every single time 4 that you do that, but -- and I'm saying it 5 again, "asked and answered," if it keeps 6 going on -- 7 MR. GRIGGS: I'm going to have to 8 get a referee, or a master here at this 9 deposition, Mr. Shea. 10 MR. SHEA: If it keeps going, I'm 11 going to instruct her not to answer. Just 12 so you know . . . 13 MR. GRIGGS: Well, then we're going 14 to have an unfortunate discovery dispute 15 with Judge Saylor (phonetic), if you 16 continue in this manner, and so -- 17 MR. SHEA: That's fine. Let's just 18 continue in this regard. 19 Q. (By Mr. Griggs) Do you have a 20 specific date as to this first alleged act of 21 discrimination? 22 A. When I was injured on the job, in 23 January; at the end of January, I was injured on 24 the job.</p>
Page 23	Page 25
<p>1 cut her off -- 2 Are you done with your answer? 3 THE WITNESS: Yes. 4 MR. SHEA: I just want to be sure. 5 Q. (By Mr. Griggs) So, once again, 6 when was the first act of discrimination that 7 you can recall? 8 MR. SHEA: It's been asked and 9 answered. It started in January, what's 10 the -- 11 MR. GRIGGS: Are you testifying or 12 is this a -- 13 MR. SHEA: I'm not going to let you 14 ask her the same -- this is like the third 15 time that you asked her, "When was the 16 first time --" 17 MR. GRIGGS: Well, her answers are 18 extremely vague, and I was just -- 19 MR. SHEA: "I was denied 20 accommodations in January," is what she 21 said. Is there some other question rather 22 than go back to the same question that 23 you've already asked? 24 MR. GRIGGS: I'm only going to ask</p>	<p>1 Q. The end of January you were injured 2 on the job. And what injury did you suffer on 3 the job in January? 4 A. I suffered a strain in the abdomen. 5 I was kicked by a resident during patient care. 6 Q. Did you receive treatment for this? 7 A. Yes, I did. 8 Q. Where did you go for this 9 treatment? 10 A. I went to Women's and Children's 11 Center in Worcester Med city. 12 Q. Do you recognize any medical 13 records in this package from that admission, or 14 from that visit -- were you admitted; let me ask 15 you this. 16 A. I was not admitted. I was seen in 17 Women's and Children's Center 18 MR. SHEA: This packet being 19 Exhibit 1, is that what you're referring 20 to? 21 MR. GRIGGS: Correct. 22 23 (Brief pause) 24</p>

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<p>1 MR. SHEA: For the record, these</p> <p>2 are Dr. Farrycy's records.</p> <p>3 THE WITNESS: I don't see it in the</p> <p>4 doctor's files, but there is in my -- and</p> <p>5 I just want to make, for the record, that</p> <p>6 in my employee files the last time I was</p> <p>7 here when it said I got injured on the</p> <p>8 job, it was actually January and not</p> <p>9 April, but I said April because I was</p> <p>10 looking in my employee file, in my</p> <p>11 employee file record, and it indicates</p> <p>12 that it says "April." It wasn't in April.</p> <p>13 It actually was in January.</p> <p>14 MR. SHEA: I think she was</p> <p>15 referring to an incident report in the</p> <p>16 employee file, it says "April."</p> <p>17 MR. GRIGGS: I'm going to mark this</p> <p>18 document as Exhibit 2.</p> <p>19 Q. (By Mr. Griggs) This is an</p> <p>20 incident report, dated April 24 -- it's April 28</p> <p>21 of 2004. Do you recognize this?</p> <p>22 A. (Witness viewing document) Yes, I</p> <p>23 do.</p> <p>24 Q. Is this the incident report of</p>	<p>1 for the record, that she cannot read</p> <p>2 but --</p> <p>3 THE WITNESS: It does not say</p> <p>4 clearly that I was kicked in -- by a</p> <p>5 resident. It said, "While during</p> <p>6 incontinent on resident Bed C, (Rm 18) -</p> <p>7 felt a pull in the lower abandon," and</p> <p>8 that's not right. I was kicked by the</p> <p>9 resident during patient care.</p> <p>10 Q. (By Mr. Griggs) And you see at the</p> <p>11 bottom it says "Refused to go to the hospital by</p> <p>12 ambulance"?</p> <p>13 A. By ambulance, because I didn't have</p> <p>14 money. I -- I was struggling -- well, I</p> <p>15 shouldn't say . . .</p> <p>16 MR. SHEA: He's just asking you</p> <p>17 whether you see that language, I think</p> <p>18 that was the question --</p> <p>19 THE WITNESS: Yes, I see it.</p> <p>20 MR. SHEA: -- I think that was the</p> <p>21 question.</p> <p>22 THE WITNESS: Yes. I drove myself</p> <p>23 to the hospital that night.</p> <p>24 MR. SHEA: He's just asking you</p>
Page 27	Page 29
<p>1 which you speak?</p> <p>2 A. Yes, it is.</p> <p>3 Q. So you're saying that the date at</p> <p>4 the top, which indicates 4-28-04, and the date</p> <p>5 on the bottom, 4-28-04 are, in fact, erroneous?</p> <p>6 A. Yes, I am.</p> <p>7</p> <p>8 (Exhibit 2, Incident Report, marked</p> <p>9 for identification)</p> <p>10</p> <p>11 Q. (By Mr. Griggs) In that document,</p> <p>12 does it say anywhere that you were kicked in the</p> <p>13 stomach?</p> <p>14 A. (Witness viewing document)</p> <p>15 MR. SHEA: Can you read that entire</p> <p>16 document? I'm just curious, because I</p> <p>17 can't read it. I can't read some of that</p> <p>18 handwriting on there, but to the extent</p> <p>19 you can answer that.</p> <p>20 MR. GRIGGS: Once again, I'm going</p> <p>21 to renew my objection as to coaching the</p> <p>22 witness, by speaking objections, and renew</p> <p>23 the questions [sic] that you are asking.</p> <p>24 MR. SHEA: I guess, I'll object,</p>	<p>1 whether you see the language.</p> <p>2 THE WITNESS: And I wasn't --</p> <p>3 MR. GRIGGS: You don't have to</p> <p>4 explain the question, Mr. Shea. I can do</p> <p>5 that.</p> <p>6 MR. SHEA: Well, that's what you</p> <p>7 asked. "Do you see the language" is what</p> <p>8 he asked you.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. SHEA: Okay.</p> <p>11 Q. (By Mr. Griggs) And is that</p> <p>12 language true?</p> <p>13 A. Yes, I refused to go to the</p> <p>14 hospital by ambulance, but I drove myself there.</p> <p>15 Q. And who did you receive services</p> <p>16 from?</p> <p>17 A. Women's and Children's Center in</p> <p>18 Worcester Med city --</p> <p>19 Q. Is that the full name of that --</p> <p>20 A. Yes.</p> <p>21 Q. -- which would be Women's and</p> <p>22 Children's Center --</p> <p>23 A. In Worcester Medical City Hospital.</p> <p>24 Q. Do you recall the names of any</p>

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<p>1 persons that treated you at Med City after this 2 incident? 3 A. You're talking three years ago. I 4 don't recall, offhand. I don't know. 5 Q. Now, you said you drove yourself to 6 the hospital, correct? 7 A. Yes. 8 Q. And -- and where did you park when 9 you went to the hospital that day? 10 A. I parked in the emergency room. 11 Q. Is there a parking lot there? 12 A. Yes, there is. 13 Q. And how far is the parking lot from 14 the door from where you parked? 15 A. I parked straight -- I actually was 16 in the main entrance, because you couldn't 17 park -- I don't remember, offhand. Like I said, 18 this is three years ago. I drove myself to the 19 hospital. I don't remember if I went directly 20 right in and they wheeled me down in a 21 wheelchair. They knew I was coming. My work 22 called them, told them I was on my way. They 23 met me outside with the wheelchair -- I -- 24 MR. SHEA: Just what you remember.</p>	<p>1 A. That note was from the hospital, 2 itself, and Ann had refused the note. She told 3 me it wasn't legit, because it wasn't from my 4 OB-GYN. 5 THE REPORTER: She told you it 6 wasn't legit? 7 THE WITNESS: Yes. From the 8 hospital. 9 Q. (By Mr. Griggs) Do you remember the 10 name of the physician that authored that note? 11 Do you have a copy of that note? 12 A. No, I do not. 13 MR. GRIGGS: Have you produced a 14 copy of that note? 15 MR. SHEA: No, I don't have a copy 16 of that note. 17 Q. (By Mr. Griggs) And do you remember 18 the name of this doctor? 19 A. No. It was a lady doctor. It was 20 the only doctor. I really don't know. 21 Q. Did you ever request light duty? 22 A. Yes, I have. After I was injured 23 on the job. 24 Q. And this was in January of 2004,</p>
Page 31	Page 33
<p>1 THE WITNESS: I -- I remember going 2 in by a wheelchair. I went down an 3 elevator and it was right there. And 4 that's also where I had my daughter, my 5 daughter was born in the same place. 6 Q. (By Mr. Griggs) So you parked your 7 car and you walked to the front door? 8 A. Yes. They met me outside in a 9 wheelchair. 10 Q. And what happened after that? 11 A. They brought me in. They examined 12 me. I was there until six, seven o'clock in the 13 morning. The incident happened at 2 a.m. at 14 work. 15 Q. So you were in the emergency ward 16 that entire four to five hours -- 17 A. Yes. Yes, I was. They did 18 ultrasounds. They did blood work. I mean -- 19 Q. And then you were released in the 20 morning? 21 A. I was released, yes. I brought the 22 document -- I had a note saying I was able to 23 return to work. 24 Q. And who was that note from?</p>	<p>1 when you said you were injured on the job? 2 A. Yes. 3 Q. And who did you ask for light duty 4 from? 5 A. Well, my doctor offered. He wanted 6 me to have light duty for no lifting, no heavy 7 lifting, no bending. 8 Q. What doctor was this? 9 A. Dr. Farricy. 10 I had brought the light-duty note 11 to Ann. She told me she could not accept 12 this -- there was no such thing as "light duty." 13 I had not received any accommodations for light 14 duty -- 15 Q. I didn't ask all those questions. 16 MR. SHEA: Well -- well, she's 17 giving you her answer. 18 MR. GRIGGS: I can ask questions 19 the way I want to, Mr. Shea. And I would 20 appreciate if you would just let me ask 21 the questions, not continue to coach the 22 witness -- 23 MR. SHEA: You can't cut her off -- 24 MR. GRIGGS: She's answering the</p>

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<p>1 question -- in the middle of an answer --</p> <p>2 MR. SHEA: You're asking her --</p> <p>3 MR. GRIGGS: And you can't cut me</p> <p>4 off in the middle of a statement, and you</p> <p>5 can't cut your own witness off --</p> <p>6 MR. SHEA: When you're done with</p> <p>7 your statement, let me speak. Are you</p> <p>8 done? Are you done?</p> <p>9 MR. GRIGGS: No, I'm not done.</p> <p>10 You've interrupted many-a-question; you've</p> <p>11 also interrupted your own witness many</p> <p>12 times, and you've coached her; you've told</p> <p>13 her, "Not to answer"; you've told her,</p> <p>14 "Only from her recollection"; you've</p> <p>15 stopped her from talking at times, and</p> <p>16 then you were trying to stop me from</p> <p>17 stopping her from talking at times when</p> <p>18 she's not answering the question.</p> <p>19 This is my deposition. I'm taking</p> <p>20 this deposition, and if you don't stop</p> <p>21 doing this right now, we're going to have</p> <p>22 to suspend, once again, and we're going to</p> <p>23 go to Judge Saylor (phonetic) and get a</p> <p>24 master for this deposition.</p>	<p>1 finished, though.</p> <p>2 MR. SHEA: Don't cut her off in the</p> <p>3 middle of an answer, okay?</p> <p>4 Thank you.</p> <p>5 MR. GRIGGS: We have to start</p> <p>6 again.</p> <p>7 Q. (By Mr. Griggs) When did you first</p> <p>8 ask for light duty?</p> <p>9 A. After I was injured on the job.</p> <p>10 Q. And do you remember the date?</p> <p>11 A. I remember it was in January.</p> <p>12 Q. And you said you spoke with Ann</p> <p>13 Kimball?</p> <p>14 A. Correct. I had given her the</p> <p>15 light-duty note.</p> <p>16 Q. And is this the light-duty note of</p> <p>17 January 12, 2004, from Dr. Farricy? Do you</p> <p>18 recall?</p> <p>19 A. No. No, I don't.</p> <p>20 Q. Do you recall being given a note by</p> <p>21 Dr. Farricy that you were able to lift without</p> <p>22 restrictions?</p> <p>23 A. Yes. That was before I was injured</p> <p>24 on the job.</p>
Page 35	Page 37
<p>1 MR. SHEA: I completely disagree</p> <p>2 with what you just said. And the question</p> <p>3 before the witness was, who did she talk</p> <p>4 to about light duty and she was giving you</p> <p>5 an answer.</p> <p>6 MR. GRIGGS: I didn't ask her what</p> <p>7 was said.</p> <p>8 MR. SHEA: You cut her off --</p> <p>9 MR. GRIGGS: I didn't ask her what</p> <p>10 was said. I can ask that as the next</p> <p>11 question, and you don't have to sit here</p> <p>12 and do this on the record, but I'll</p> <p>13 appreciate it if you let me ask questions,</p> <p>14 and if I think it's been answered, I'll</p> <p>15 move on to the next question.</p> <p>16 MR. SHEA: You can't cut a witness</p> <p>17 off in the middle of the answer. If you</p> <p>18 don't like the answer, or you think that</p> <p>19 she's going down a road that you don't</p> <p>20 like or you don't think she's answering</p> <p>21 the question the way you would like it</p> <p>22 answered, you need to let her finish the</p> <p>23 answer to the question. That's all I ask.</p> <p>24 MR. GRIGGS: Well, I think she's</p>	<p>1 Q. So you're saying that you were</p> <p>2 given a so-called light-duty note --</p> <p>3 A. No --</p> <p>4 Q. After you were injured on the job?</p> <p>5 A. It was a note saying that I was --</p> <p>6 supposed to be no lifting, no bending, no heavy</p> <p>7 lifting or nothing.</p> <p>8 MR. GRIGGS: Can we go off the</p> <p>9 record for a second?</p> <p>10</p> <p>11 (Brief break)</p> <p>12</p> <p>13 Q. (By Mr. Griggs) So you requested</p> <p>14 light duty for the first time after you were</p> <p>15 injured on the job; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. I'm going to show you --</p> <p>18 A. After I was injured on the job, I</p> <p>19 was asked for no lifting restrictions in</p> <p>20 January.</p> <p>21 Q. I'm sorry. Could you repeat that?</p> <p>22 A. The January 12th note, was prior to</p> <p>23 the no lifting restrictions, which I wasn't</p> <p>24 accommodated for. I was accommodated -- I had</p>

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<p>1 told Ann that my doctor told me I shouldn't be 2 lifting. 3 Q. Let's go one step at a time, if we 4 could. 5 A. Okay. 6 MR. GRIGGS: Let's try this. Why 7 don't I mark this as Exhibit 3. 8 9 (Exhibit 3, Letter, dated 01/12/04, 10 marked for identification) 11 12 MR. GRIGGS: And this letter dated 13 January 26, 2004. 14 15 (Exhibit 4, Letter, dated 01/26/04, 16 marked for identification) 17 18 MR. GRIGGS: So Exhibit 3 would be 19 Dr. Farricy's letter, dated January 12, 20 2004; and Exhibit 4 would be Dr. Farricy's 21 letter, dated January 26, 2004. 22 Q. (By Mr. Griggs) So the letter 23 dated -- from Dr. Farricy, dated January 12 -- 24 January 26, 2004, can you just briefly read</p>	<p>1 Whom to May Concern, Wendy Gauthier was seen in 2 my office today. It is my recommendation that 3 she is able to continue working and lifting with 4 caution. Any questions regarding this matter, 5 please call the office. Thank you. Sincerely, 6 Dr. Farricy." 7 Q. So you say you were injured on the 8 job on January 26th -- I'm sorry -- 9 January 24th -- 10 A. Correct. 11 Q. -- 2004. And that's the same day 12 you drove to Women's and Children's Center in 13 Med city? 14 A. Correct. 15 Q. So January 24, 2004, was when you 16 were kicked in the stomach? 17 A. Yes. 18 Q. And so, Dr. Farricy then on 19 January 26th wrote this note, which you gave to 20 Ann Kimball; is that correct? 21 A. That's correct. 22 MR. SHEA: Can you just say which 23 one -- 24 MR. GRIGGS: Exhibit 4, the January</p>
Page 39	Page 41
<p>1 those two letters? 2 A. (Witness viewing document) Yes. 3 "January 12, 2004, To Whom It May Concern" -- 4 Q. You don't have to read them out 5 loud. I'm sorry. I just want you to 6 re-familiarize yourself with them. 7 A. Okay. 8 9 (Brief pause) 10 11 Q. (By Mr. Griggs) Okay. I'm just 12 finding the time line a little bit murky, so I'm 13 going to ask what may seem like some repetitive 14 questions; however, now that you've reviewed 15 these two letters, can you give me a date as to 16 when you were injured on the job? 17 A. January 24, 2004. 18 Q. So if I have you look at Exhibit 4, 19 the letter of January 26th, can you read the 20 first full sentence of that letter? 21 A. (Witness viewing document) Out 22 loud? 23 Q. Yes, please. 24 A. (Witness viewing document) "To</p>	<p>1 26th letter. 2 MR. SHEA: All right. 3 Q. (By Mr. Griggs) Do you know if he 4 sent this directly, or did he give it to you and 5 you gave it to Ann? 6 A. I believe I gave it to Ann. 7 Q. And you continued to work after 8 January 26, 2004; is that correct? 9 A. Correct. 10 Q. When did you ask -- now that you've 11 read these letters and we've determined that 12 January 24th was the date that you were kicked 13 in the stomach, now let me ask the question 14 again, and I'll ask it: When did you ask Ann 15 for light duty? 16 A. I asked Ann for light duty after I 17 was injured on the job, and I had brought her a 18 doctor's note stating light duty, no heavy 19 lifting. I mean, I -- I could be right; I could 20 be wrong, I'm not sure. But this one might be 21 the light-duty one. 22 MR. SHEA: Exhibit 4. 23 THE WITNESS: Yeah, I'm sorry but 24 I'm not sure but there was -- I know there</p>

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<p>1 was definitely a light-duty note stating</p> <p>2 that there was no heavy lifting and no</p> <p>3 bending.</p> <p>4 Q. (By Mr. Griggs) So was it a</p> <p>5 different letter than Exhibit 4?</p> <p>6 A. I believe there was.</p> <p>7 Q. Okay. Do you have a copy of that</p> <p>8 letter?</p> <p>9 A. I do not. This is like three years</p> <p>10 ago. I -- I should have took [sic] notes, but</p> <p>11 I -- I didn't.</p> <p>12 Q. So this package of records that</p> <p>13 we've marked as Exhibit 1, 30 pages, is from</p> <p>14 Dr. Farricy's office; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. But you believe that he authored</p> <p>17 another note; is that correct?</p> <p>18 A. Yes, that is correct.</p> <p>19 Q. And so this note is not in this</p> <p>20 package?</p> <p>21 A. No, it's not. I remember giving</p> <p>22 the note specifically to Ann and I told her I</p> <p>23 needed light duty. And she told me there was</p> <p>24 "no such thing as light duty," and that if I</p>	<p>1</p> <p>2 MR. GRIGGS: Back on the record.</p> <p>3 I just want to request that a</p> <p>4 certified copy of the records from</p> <p>5 Dr. Farricy --</p> <p>6 MR. SHEA: That's fine.</p> <p>7 MR. GRIGGS: -- and that way you</p> <p>8 can execute the appropriate authorization</p> <p>9 here, and I'll get that in --</p> <p>10 MR. SHEA: Sure.</p> <p>11 MR. GRIGGS: -- then we can get the</p> <p>12 certification --</p> <p>13 MR. SHEA: Sure.</p> <p>14 MR. GRIGGS: I just want to make</p> <p>15 sure that we have it.</p> <p>16 MR. SHEA: We'll save this. It's</p> <p>17 my understanding that what we've marked as</p> <p>18 Exhibit 1, is the records from his office,</p> <p>19 this is what he produced. And I would</p> <p>20 just want any records that you get with a</p> <p>21 certification, or a release, be stamped</p> <p>22 "CONFIDENTIAL" and fall within the</p> <p>23 confidentiality agreement, in this case.</p> <p>24 MR. GRIGGS: Certainly. We agree.</p>
Page 43	Page 45
<p>1 couldn't perform my job up to my fullest, then I</p> <p>2 couldn't work here anymore. That's what she had</p> <p>3 told me in her exact words.</p> <p>4 Q. Now, Exhibits 3 and 4, do you see</p> <p>5 those also within the 30 pages of Exhibit 1; if</p> <p>6 you can flip through quickly and identify that</p> <p>7 as the same letters?</p> <p>8 A. (Witness viewing document) Yes.</p> <p>9 MR. SHEA: So far, I'm only seeing</p> <p>10 January 4, 2004, but I could --</p> <p>11 THE WITNESS: I have a "May 6"</p> <p>12 letter.</p> <p>13 THE REPORTER: I'm sorry, you have</p> <p>14 a, what? You have a "May 6" letter?</p> <p>15 THE WITNESS: That's a "May 6" one?</p> <p>16 Q. (By Mr. Griggs) But you see --</p> <p>17 don't separate them.</p> <p>18 Do you see a "January 26" one?</p> <p>19 A. No, I don't.</p> <p>20 MR. SHEA: I don't either. I don't</p> <p>21 know why, but I don't see it.</p> <p>22 MR. GRIGGS: Off the record.</p> <p>23</p> <p>24 (Off record discussion)</p>	<p>1 MR. SHEA: All right.</p> <p>2 Q. (By Mr. Griggs) So, once again,</p> <p>3 let me read Exhibit 4, the letter of</p> <p>4 January 26th, did you speak to Ann Kendall about</p> <p>5 light duty before or after January 26th?</p> <p>6 A. It was after. After I was injured</p> <p>7 on the job.</p> <p>8 Q. Well, before I believe, you had</p> <p>9 said you were injured on the job with this</p> <p>10 kick-in-the-stomach incident of January, 2004;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this letter is two days later</p> <p>14 than that; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. So my question was --</p> <p>17 A. I was seen in his office. I had to</p> <p>18 go back and see him at his office, because she</p> <p>19 wouldn't accept the letter from the hospital.</p> <p>20 So she told me I needed a letter from him</p> <p>21 stating "light duty, no lifting."</p> <p>22 Q. So you had a letter from the</p> <p>23 hospital, you said?</p> <p>24 A. I had a letter from the hospital,</p>

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13 (Pages 46 to 49)

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<p>1 yes. I do not have the letter on me, no. I had 2 given it to Ann Kimball. She told me she could 3 not accept this note because it wasn't from my 4 OB-GYN. It needed to be from him, so I saw him 5 the next day; brought the note. She said, "I 6 can't accept this note because it's not from 7 your primary-care doctor." And then I tried to 8 explain to her that when you're pregnant, you 9 lose your primary-care physician, your OB-GYN 10 becomes your primary-care doctor. And my doctor 11 had asked for light duty, and I was not 12 accommodated for light duty. She told me -- 13 what's that -- oh, she told me there was "no 14 such thing as light duty." And it wasn't 15 offered to me, but it was offered to other 16 employees that had worked there. 17 Q. My question -- let me ask this 18 question: Who is "my doctor," when you say, "my 19 doctor"? 20 A. Dr. Farricy. And he was my doctor 21 at the time. 22 Q. When you were saying -- when you 23 just said that your doctor said what -- I'm 24 sorry -- your doctor -- you said that your</p>	<p>1 essential job functions when you returned to 2 work after you were injured on the job? 3 A. Yes, I had to. 4 Q. Did you ever file a workmen's 5 compensation complaint? 6 MR. SHEA: Objection. 7 You can answer that. 8 THE WITNESS: Did I? 9 Q. (By Mr. Griggs) Yes. 10 A. At the time, no. 11 There was -- there was nothing 12 brought up to me about workmen's compensation. 13 Q. Did you ever ask anyone about 14 workmen's compensation? 15 A. No. 16 Q. Did you ever speak to anyone at 17 SunBridge about workmen's compensation? 18 A. No, I did not. 19 Q. In your complaint relating to this 20 lawsuit, it was stated that you believe you were 21 discriminated against, or retaliated against -- 22 I'm paraphrasing -- for filing a workmen's 23 compensation claim; is that correct? 24 A. Correct.</p>
Page 47	Page 49
<p>1 doctor said, "no heavy lifting"? 2 A. Correct. 3 Q. So, once again, was it a hospital 4 doctor from Women's and Children's Center in Med 5 City that wrote this note or was it your 6 doctor -- 7 A. This one -- this is from my doctor. 8 Dr. Farricy. 9 Q. Okay. So when you say, "My doctor 10 said 'no heavy lifting,'" which doctor is that? 11 A. Dr. Farricy. 12 Q. And did Dr. Farricy ever put that 13 in writing, to your knowledge? 14 A. Yes, he did. 15 Q. And is that Exhibit 3 or 4? 16 A. I believe it's four. But, like I 17 said, I'm not sure. And, I believe, there was 18 another note with this one. It said, "no 19 lifting and no bending," due to complications of 20 my pregnancy. 21 Q. But, nonetheless, you did return to 22 work; is that correct? 23 A. That is correct. 24 Q. And were you able to fulfill your</p>	<p>1 Q. And you just said you never filed a 2 workmen's compensation claim. 3 MR. SHEA: Objection. It's not 4 even her responsibility to file -- 5 MR. GRIGGS: I didn't ask you the 6 question. I'm asking if this is true? 7 MR. SHEA: Your company had filed 8 it on her physician statement, so -- we're 9 playing semantics here. 10 MR. GRIGGS: For the record, that's 11 an inaccurate statement, but we will move 12 on from there. 13 Q. (By Mr. Griggs) Page 2 of your -- 14 15 MR. GRIGGS: Off the record. 16 17 (Off record discussion) 18 19 MR. GRIGGS: Back on the record. 20 Q. (By Mr. Griggs) Were you aware 21 that a workmen's compensation claim was filed on 22 your behalf? 23 A. Yes. 24 Q. And what was the results of that</p>

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<p>1 claim, to your knowledge?</p> <p>2 A. At this time?</p> <p>3 Q. At all. After you said you were</p> <p>4 aware that a claim was filed; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you ever hear back as to</p> <p>7 whether your claim for benefits --</p> <p>8 A. Nothing.</p> <p>9 Q. -- was granted --</p> <p>10 A. Nothing.</p> <p>11 Q. You never heard anything back?</p> <p>12 A. No, nothing. So that's why I</p> <p>13 didn't even know if a workmen's compensation had</p> <p>14 been filed or not. I don't know, I believe, it</p> <p>15 probably was, but no one got back to me and --</p> <p>16 Q. Okay. Can I direct your attention</p> <p>17 to page 28 of Exhibit 1, it's a letter dated</p> <p>18 May 6, 2004?</p> <p>19 A. (Witness viewing document) Yep.</p> <p>20 Q. And can you just read that letter?</p> <p>21 It's three sentences.</p> <p>22 A. (Witness viewing document) Yes.</p> <p>23 "To Whom It May Concern, Wendy Gauthier is a</p> <p>24 patient under my care and was seen in my office</p>	<p>1 restrictions."</p> <p>2 Thank you.</p> <p>3 Q. (By Mr. Griggs) Once again, when</p> <p>4 you're saying, "my doctor," you're talking about</p> <p>5 Dr. Farricy, correct?</p> <p>6 A. I'm talking about Dr. Farricy,</p> <p>7 correct. So that's when I went back to him, and</p> <p>8 I told him that. I needed full duty to return</p> <p>9 back to work because, otherwise, I told him, I</p> <p>10 would be out without a job.</p> <p>11 Q. So aside from this request for</p> <p>12 light duty which you say you made sometime after</p> <p>13 January 24, 2004, and sometime before</p> <p>14 January 26, 2004, are there any other times that</p> <p>15 you requested light duty?</p> <p>16 MR. SHEA: Light duty?</p> <p>17 THE WITNESS: It was an on-going</p> <p>18 thing throughout the whole time I asked</p> <p>19 for accommodations, and I was refused</p> <p>20 accommodations.</p> <p>21 Q. (By Mr. Griggs) Well, let's talk</p> <p>22 about that a little bit. Just to clarify the</p> <p>23 time frame for me one more time; the first time</p> <p>24 you requested light duty was, in fact, after you</p>
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<p>1 today. It was my recommendation that she is</p> <p>2 able to perform her full duties as usual at</p> <p>3 work. Any questions regarding this matter,</p> <p>4 please call the office. Thankyou." [sic]</p> <p>5 Q. So between January 24th and May 6,</p> <p>6 2004, were you able to perform your essential</p> <p>7 job functions as a CNA at SunBridge?</p> <p>8 MR. SHEA: Objection.</p> <p>9 THE WITNESS: Yes, under that note.</p> <p>10 But technically, no; because I was told by</p> <p>11 Ann. I needed the job. My doctor put me</p> <p>12 on light duty. I was refused light duty.</p> <p>13 I had to go back to my doctor. He was on</p> <p>14 vacation. I had to wait a few weeks, four</p> <p>15 weeks, three -- a couple of weeks. I</p> <p>16 don't exactly remember. I was told I had</p> <p>17 to perform my full duty to go back -- I</p> <p>18 went back to my doctor and I told him the</p> <p>19 situation. I said, "Look, I need a job."</p> <p>20 And I said, "I need you to put me back on</p> <p>21 full duty without no" -- no -- what am I</p> <p>22 thinking of?</p> <p>23 MR. SHEA: Restrictions.</p> <p>24 THE WITNESS: Yeah -- "no</p>	<p>1 were kicked in the stomach, January 24, 2004,</p> <p>2 and this letter of January 26, 2004, which we've</p> <p>3 marked a Exhibit 4; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Did you request an accommodation in</p> <p>6 the form of light duty subsequent to January 26,</p> <p>7 2004?</p> <p>8 A. Yes, from the injury, and also from</p> <p>9 the pregnancy.</p> <p>10 Q. When was the next time after this</p> <p>11 first incident where you asked for light duty?</p> <p>12 When was the second time you asked for light</p> <p>13 duty?</p> <p>14 A. It's -- I don't know exactly the</p> <p>15 dates, but it's been throughout. It's like it</p> <p>16 was an on-going thing. I asked for light duty.</p> <p>17 I asked for accommodations. I -- and I was</p> <p>18 refused. It's just, I can't give you the</p> <p>19 specific dates. I really don't know. I just</p> <p>20 know there was numerous times I had asked her</p> <p>21 for light duty and accommodations, and I was</p> <p>22 turned down.</p> <p>23 Q. Let me ask you this, then: Roughly</p> <p>24 how many times did you ask Ann Kendall for light</p>

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<p>1 duty?</p> <p>2 A. Maybe four to five times.</p> <p>3 Q. Did you ever ask anybody else for</p> <p>4 light duty?</p> <p>5 A. No, because she was the D.O.N. and</p> <p>6 she's the one that CNAs went through, or spoke</p> <p>7 through, for work.</p> <p>8 She's the one that the CNAs dealt</p> <p>9 with because we worked -- she was our boss.</p> <p>10 Q. And on those four or five other</p> <p>11 times, what can you tell me that she told you?</p> <p>12 A. The same thing. She told me that</p> <p>13 there was "no such thing as light duty." She</p> <p>14 told me if I couldn't work here, I wouldn't have</p> <p>15 a job, that, if I couldn't perform my job, then</p> <p>16 I couldn't work here.</p> <p>17 I asked her for accommodations to</p> <p>18 take days off to go to doctors' appointments and</p> <p>19 she told me, no, she couldn't do that. There</p> <p>20 was numerous times I was at work, I needed my</p> <p>21 feet to be up because they were swollen so bad</p> <p>22 and I feel that I performed my job to my best</p> <p>23 abilities and I -- I went above and beyond the</p> <p>24 call of duty at work. I believe I was a great</p>	<p>1 A. No.</p> <p>2 Q. Did you ever see a psychiatrist?</p> <p>3 A. No, but it's just stressful when</p> <p>4 you're trying to get back to work, and you can't</p> <p>5 get back to work, and you have notes, and you --</p> <p>6 and had no -- you know, I'm trying to go back to</p> <p>7 work. I'm trying to work. I'm pregnant. I'm</p> <p>8 having complications. She wouldn't accept the</p> <p>9 notes, and I kept bringing her notes -- bringing</p> <p>10 her notes and she kept rejecting me and</p> <p>11 rejecting me, and I was trying to go back to</p> <p>12 work and I had finally -- that's when I finally</p> <p>13 went to my doctors in May and I said, "I need to</p> <p>14 go back to work." And I was terminated in May</p> <p>15 for a "no call/no show" that they had me down</p> <p>16 for, that I never -- I never -- that I never</p> <p>17 did.</p> <p>18 Q. Did you ever file a claim for</p> <p>19 unemployment benefits?</p> <p>20 A. I tried to. I had called</p> <p>21 unemployment because I never -- like I said,</p> <p>22 I've never been in this situation before. I</p> <p>23 never had -- since I was 18 years old, I never</p> <p>24 had to try to go for unemployment. I always had</p>
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<p>1 CNA. I mean, I never hurt anybody, you know,</p> <p>2 I -- I took care of my patients and I was</p> <p>3 planning on going back after I had my daughter,</p> <p>4 but it didn't turn out that way.</p> <p>5 Q. Do you recall how many times you</p> <p>6 asked for time off or days off for doctor's</p> <p>7 appointments?</p> <p>8 A. There was numerous times, I</p> <p>9 couldn't specifically tell you. But I was also</p> <p>10 written up for numerous call-outs, and that was</p> <p>11 due to my pregnancy.</p> <p>12 Q. Did you ever seek treatment for any</p> <p>13 symptoms in connection with any emotional</p> <p>14 distress that you claim to have suffered as a</p> <p>15 result of this?</p> <p>16 A. Did I see anybody? No.</p> <p>17 Q. Yes. Did you see anybody with</p> <p>18 respect to any emotional distress you claim to</p> <p>19 have suffered from your experience with</p> <p>20 SunBridge?</p> <p>21 A. No, I did not.</p> <p>22 Q. And so you were never prescribed</p> <p>23 any medications with regard to any emotional</p> <p>24 issues?</p>	<p>1 a job. The first time I tried unemployment, I</p> <p>2 was turned down. Unemployment told me -- I</p> <p>3 don't know who it was. I wish I could</p> <p>4 remember -- he told me that Steve Copper told</p> <p>5 him that I was pregnant, and I was unable to</p> <p>6 collect. In the State of Massachusetts this is</p> <p>7 what I was told. If I was pregnant, then I</p> <p>8 cannot collect anything, so I wasn't collecting</p> <p>9 anything.</p> <p>10 But I had called unemployment</p> <p>11 myself, but ...</p> <p>12 Q. Now, after you --</p> <p>13 MR. SHEA: I'm just going to object</p> <p>14 to the last question.</p> <p>15 Q. (By Mr. Griggs) After you were</p> <p>16 terminated from SunBridge, when did you first</p> <p>17 begin seeking new employment?</p> <p>18 A. Around October.</p> <p>19 Q. And who did you first contact about</p> <p>20 new employment?</p> <p>21 A. Where I am now. I work at Seven</p> <p>22 Hills Foundation.</p> <p>23 Q. And when did you start your job at</p> <p>24 Seven Hills Foundation?</p>

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<p>1 A. I want to say it was in November. 2 Q. Now, your daughter's name is 3 Hannah; is that correct? 4 A. Correct. 5 Q. A wonderful name. 6 A. Thank you. 7 Q. When was Hannah born? 8 A. She was born 7-10-04. 9 Q. And when did you start work at 10 Seven Hills; roughly in November? 11 A. It was probably about November, 12 between October and November. Well, I was going 13 for -- it takes awhile, because you got to go 14 through three -- my God -- interviews. So I had 15 to go on, like, three job interviews before I 16 was hired, so that took awhile. So you're 17 probably looking at, like, maybe November. 18 Q. So, once again, Seven Hills 19 Foundation was the first employment inquiry you 20 made? 21 A. Yes. 22 Q. And who did you speak to at Seven 23 Hills? 24 A. At the time, it was -- oh, she's</p>	<p>1 Q. And you said there were four or 2 five more times? 3 A. Yes. It was an on-going thing, 4 between January and May because I had 5 complications during my pregnancy. 6 Q. So were there any other times where 7 you felt discriminated against, other than those 8 times that we've just spoken about the first 9 time plus the additional four to five more times 10 when you requested light duty? 11 A. Yes. It was for a "no call/no 12 show" -- 13 Q. And this "no call/no show" is -- 14 MR. SHEA: Can she finish? I don't 15 know if she's done. I just get the sense 16 she's not -- 17 Are you done with your answer? 18 THE WITNESS: Yes. 19 MR. SHEA: Okay. I just want to 20 make sure. 21 MR. GRIGGS: Did you have an 22 objection? 23 MR. SHEA: I think you're cutting 24 her off, is my objection. I'm getting the</p>
Page 59	Page 61
<p>1 not there anymore. What the heck's her name? I 2 can't think of her name. She's not there 3 anymore. 4 Q. It's okay. 5 A. She hired me. I don't know. I'm 6 still working there. It will probably come to 7 me; but right now, no. She was only -- I was 8 only there for a few weeks then she left, so I 9 didn't really know her. 10 Q. Okay. So you started -- to the 11 best of your recollection -- sometime in 12 November? 13 A. Yes. 14 Q. Do you think it was early November 15 or late November? 16 A. Probably, late November, more late, 17 probably late November. 18 Q. So when I asked you when the first 19 time was that you felt discriminated against at 20 SunBridge, you told me that it was when Ann 21 Kendall denied your request for light duty 22 sometime between January 24 and 26, 2004; is 23 that correct? 24 A. Yes.</p>	<p>1 sense you're cutting her off, and she's 2 not done with her answer so if you could 3 just, you know, let her finish her answer, 4 that's fine with me. 5 Q. (By Mr. Griggs) The "no call/no 6 show" of which you speak, was this in May of 7 2004? 8 A. Yes. 9 Q. And is it the one that resulted in 10 your termination? 11 A. Yes, that I never committed. 12 Q. So outside of these times, these 13 are -- this is -- are these times that we've 14 just talked about are the only instances of 15 discrimination that you have that you've been 16 subjected to at SunBridge? 17 MR. SHEA: Objection. 18 THE WITNESS: Through my whole -- I 19 guess that from January to May, I tried to 20 make accommodations -- for the pregnancy 21 and -- and after the injury, and I was 22 just turned down. I wasn't even offered 23 light duty on another shift because I 24 would have took [sic] It and if they</p>

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<p>1 offered me light duty on another shift, I 2 would have said, "Okay." But I could have 3 worked something out, but I wasn't given 4 that opportunity. 5 Q. (By Mr. Griggs) Did you ever ask 6 Ann Kendall if you could shift to another shift? 7 A. She just told me "No." There was 8 "no such thing as light duty," and if I can't 9 perform my job here, then I can't work here. So 10 I was referring to the "no call/no show" as 11 their way to terminate me and to get rid of me 12 because they probably felt that I was a 13 liability towards them because I wasn't good on 14 the job. 15 Q. The question was: Did you ask Ann 16 Kendall if you could change shifts, ever? 17 A. No, because it wasn't given to me, 18 that option. She just told me there was "no 19 such thing as light duty." 20 Q. Did you ever speak to anybody else 21 about changing shifts, ever? 22 A. No, I did not. 23 Q. All right. So you changed your 24 shifts changing from the night shift to --</p>	<p>1 expect that you would be paid for that maternity 2 leave? In other words, did you expect to be 3 getting paid during those 90 days? 4 A. No, I did not. 5 Q. When you were terminated on May 18, 6 2004, or thereabouts; is that correct? 7 A. Somewhere -- I think it was a 8 little towards the end of -- that's correct, 9 yes. 10 Q. If we could just, roughly, use that 11 date roughly a week or two before or after the 12 date -- 13 A. Yeah, that's fine. I don't know 14 the exact date, okay, but, yes. 15 Q. And when were you intending to take 16 90-days' maternity leave for which you didn't 17 expect to get paid -- 18 A. And that I was also planning on 19 coming back to SunBridge to work there, because 20 I enjoyed working there. 21 Q. And then you started at Seven Hills 22 in November of 2004; is that correct? 23 A. 2004? 24 Q. November of 2004?</p>
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<p>1 A. Yeah. 2 Q. -- to the day shift? 3 A. Yeah. Yeah, I know what you mean, 4 yeah. 5 Q. That's what you do, shifting to a 6 different night shift? 7 A. No, I did not. Because, like I 8 said, Ann's the one that we went through. She's 9 our boss. She's over us, so ... 10 Q. What's your current salary or your 11 current wage right now, off a recent statement? 12 A. Offhand, I believe, it's \$10.46. 13 Q. What wage rate did you start at 14 with Seven Hills? 15 A. I believe it was a little over \$12. 16 an hour. 17 Q. At Seven Hills? 18 A. Yes. But, I believe, there was a 19 shift differential in that too. But we're 20 talking three years ago. I don't remember, 21 offhand, but I know there was a shift 22 differential. 23 Q. So given that you were intending to 24 take some 90 days of maternity leave, did you</p>	<p>1 A. No, that's not correct. I think 2 2005. 3 Q. That you started with Seven Hills? 4 A. Yes. 5 Q. What was the first job you took 6 after SunBridge? 7 A. That was it. I tried -- I had a 8 hard time to find employment after my pregnancy. 9 Q. So you're talking about November of 10 the same year that your daughter was born that 11 you started working at Seven Hills, or are you 12 talking about a year later? 13 A. We're talking about a year later. 14 Q. Did you have -- 15 THE WITNESS: We don't have that 16 here? He sent me a sheet, too. 17 MR. SHEA: The tax returns, tax 18 information? 19 THE WITNESS: Yeah. 20 MR. GRIGGS: Can we go off the 21 record for a minute? 22 THE REPORTER: Sure. 23 24 (Off record discussion)</p>

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18 (Pages 66 to 69)

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<p>1 2 MR. GRIGGS: Back on the record. 3 Q. (By Mr. Griggs) When did you first 4 start at Seven Hills Foundation? 5 A. It's -- it was -- I'm all mixed up, 6 I'm sorry. It was 2006. I'm still there now. 7 I've been there a little over a year. 8 Q. Okay. When did you work at 9 anywhere prior to Seven Hills -- 10 A. After seven months. I mean, after 11 SunBridge, I worked for Senior Comfort Services. 12 Q. And when did you start with Senior 13 Comfort Services? 14 A. It must have been in 2004. That 15 was October, November. I don't exactly know, 16 offhand. You're going back three years ago, I 17 don't... 18 Q. That's my question, though. You 19 started at Senior Comfort Services in October or 20 November of 2004? 21 A. Yes, yes. 22 Q. That's correct? 23 A. Yes. 24 Q. And who did you speak to at Senior</p>	<p>1 Comfort Services? 2 A. Because I went back to the nursing 3 home, and then I left Lydia Taft House and 4 that's where I am today. I'm no longer a CNA. 5 Q. And you left Lydia Taft House 6 roughly when? 7 A. October, 2004, and then I started 8 at Seven Hills. 9 Q. And what was your salary or your 10 wage rate at Senior Comfort Services? 11 A. I believe it was 15. 12 Q. And what was your wage rate at 13 Lydia Taft House? 14 A. I don't remember offhand. It might 15 be -- in the tax -- I don't know offhand. 16 I want to say it was 12 or \$13 an 17 hour. 18 Q. Is there any other act of 19 discrimination that you want to tell me about 20 today that you would ascribe to SunBridge? 21 MR. SHEA: Objection. 22 THE WITNESS: Just when I had told 23 you about the notes, not accepting the 24 notes. I felt that she felt that I was a</p>
Page 67	Page 69
<p>1 Comfort Services? 2 A. Elaine. 3 Q. Elaine. Do you remember her last 4 name? 5 A. No, I do not. 6 Q. And when did you first speak with 7 Elaine for employment at Senior Comfort 8 Services, to your best recollection? 9 A. They're a home agency, so we go 10 into people's homes. 11 Q. And when did you first speak with 12 her about employment with Senior Comfort 13 Services, to the best of your recollection? 14 A. It must have been between October 15 and November. 16 Q. And how long did you work for 17 Senior Comfort Services? 18 A. I worked with them for a little 19 over a year. 20 Q. And where did you work after Senior 21 Comfort Services? 22 A. In 2005, I worked at the Lydia Taft 23 House, out in Uxbridge. 24 Q. And why did you leave Senior</p>	<p>1 high liability and the reason for the "no 2 call/no shows" was the way to terminate 3 me. 4 And, like I said, just not 5 accepting the notes and not giving me 6 accommodations for light duty or not even 7 offering me light duty when she told me 8 there was "no such thing as light duty," 9 then maybe, then, I should have just 10 looked for another job then, but I didn't. 11 Like I said, I enjoyed working 12 there. I enjoyed taking care of my 13 patients and I felt that I did my ability 14 to perform my job, you know, the best and 15 I always went above and beyond the call of 16 duty. 17 Q. (By Mr. Griggs) Did she ever say 18 anything to you that you would deem 19 discriminatory? 20 A. She seemed like she was frustrated 21 with me, when I was trying to give her the notes 22 from the doctors or the light-duty notes. She 23 seemed like she was getting frustrated with me 24 because I'd called out on numerous of times, due</p>

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19 (Pages 70 to 73)

Page 70	Page 72
<p>1 to my pregnancy.</p> <p>2 Q. And how did she seem frustrated to</p> <p>3 you?</p> <p>4 A. She seemed like -- just like her</p> <p>5 facial expressions, "Well, there's no such thing</p> <p>6 as light duty. I can't give you that," and</p> <p>7 she'd walk away from me.</p> <p>8 MR. GRIGGS: I don't think I have</p> <p>9 anything further.</p> <p>10 MR. SHEA: I may have one or two</p> <p>11 quick questions. I just want to take a</p> <p>12 quick break.</p> <p>13</p> <p>14 (Brief break)</p> <p>15</p> <p>16 MR. GRIGGS: Back on the record.</p> <p>17</p> <p>18</p> <p>19 EXAMINATION BY MR. SHEA:</p> <p>20</p> <p>21 Q. I just have a couple of quick</p> <p>22 questions.</p> <p>23 You testified about some</p> <p>24 accommodations that you asked of Ann Kimball for</p>	<p>1 further.</p> <p>2</p> <p>3</p> <p>4 FURTHER EXAMINATION BY MR. GRIGGS:</p> <p>5</p> <p>6 Q. So you're saying that you requested</p> <p>7 an accommodation to go to the bathroom for</p> <p>8 morning sickness, and you were denied?</p> <p>9 A. Yes.</p> <p>10 Q. You asked Ann Kendall --</p> <p>11 A. Because --</p> <p>12 Q. -- if you can go to the bathroom to</p> <p>13 throw up and she said, "No"?</p> <p>14 A. Well, Ann Kendall -- Ann Kendall is</p> <p>15 kind of -- worked the 7-to-11 shift. She was</p> <p>16 on, like -- on a summer shift. She was on the</p> <p>17 day-shift. She was our D.O.N. She didn't work</p> <p>18 nights, so I had asked a supervisor.</p> <p>19 Q. And what did you ask the</p> <p>20 supervisor?</p> <p>21 A. I had asked the supervisor, you</p> <p>22 know, "I have to go to the bathroom," you know,</p> <p>23 quite a few times. And then Ann told me -- the</p> <p>24 next day she told me -- like I said -- if I was</p>
Page 71	Page 73
<p>1 your pregnancy. What accommodations did you ask</p> <p>2 for, other than the ones that you already</p> <p>3 testified about?</p> <p>4 A. The no lifting, the swollen of the</p> <p>5 feet and using the bathroom more frequently</p> <p>6 because I had morning sickness.</p> <p>7 Q. And did you also ask for time off</p> <p>8 for your morning sickness?</p> <p>9 A. I asked for time off on numerous</p> <p>10 occasions, throughout my time span working there</p> <p>11 while I was pregnant, yes; and I was denied.</p> <p>12 Q. And did you ask for these</p> <p>13 accommodations that you just described on</p> <p>14 several occasions throughout the course of your</p> <p>15 employment?</p> <p>16 A. Yes, several times.</p> <p>17 Q. And you were denied?</p> <p>18 A. Correct.</p> <p>19 MR. GRIGGS: Object to the form of</p> <p>20 the question.</p> <p>21 Q. (By Mr. Shea) On every occasion,</p> <p>22 on every occasion you --</p> <p>23 A. On every occasions, yes.</p> <p>24 MR. SHEA: I don't have anything</p>	<p>1 unable to perform my job, then I can no longer</p> <p>2 work here anymore.</p> <p>3 Q. But I'm trying to understand what</p> <p>4 the specific accommodation was that you were</p> <p>5 requesting. Did you ask if it was okay to go to</p> <p>6 the bathroom to vomit, and they said, "No," or</p> <p>7 this other supervisor said, "No"?</p> <p>8 A. Yes, because they felt that it</p> <p>9 wasn't appropriate to do that and I had called</p> <p>10 out a numerous of times [sic] because of that,</p> <p>11 and I was written up for that.</p> <p>12 Q. Okay. Once again, though, what was</p> <p>13 the specific accommodation request --</p> <p>14 MR. SHEA: Objection. I think</p> <p>15 she's answered that; to go to the</p> <p>16 bathroom --</p> <p>17 MR. GRIGGS: To go to the bathroom.</p> <p>18 MR. SHEA: -- to deal with her</p> <p>19 morning sickness, and I think she said</p> <p>20 that. I think you asked.</p> <p>21 MR. GRIGGS: It's just that the</p> <p>22 answer's confusing.</p> <p>23 Q. (By Mr. Griggs) So you're saying</p> <p>24 that Ann Kendall said that you -- strike that.</p>

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20 (Pages 74 to 77)

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<p>1 The accommodation you sought -- and</p> <p>2 correct me if I'm wrong -- was that you be</p> <p>3 allowed to go to the bathroom; was that correct?</p> <p>4 MR. SHEA: One of them.</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. GRIGGS: Once again, you're not</p> <p>7 testifying. I'm asking her what I thought</p> <p>8 to be a simple question. You can object</p> <p>9 to the point. Go ahead.</p> <p>10 MR. SHEA: Okay.</p> <p>11 MR. GRIGGS: Go ahead. Object to</p> <p>12 the point, if you like. Let's start</p> <p>13 again.</p> <p>14 Q. (By Mr. Griggs) So you're saying</p> <p>15 that the accommodation you requested was that</p> <p>16 you be allowed to go to the bathroom?</p> <p>17 MR. SHEA: Objection.</p> <p>18 THE WITNESS: To vomit. Yeah --</p> <p>19 Q. (By Mr. Griggs) That was your --</p> <p>20 A. Frequently, yeah, I was going like</p> <p>21 there all the time.</p> <p>22 Q. And how frequently did you ask that</p> <p>23 you be allowed to go to the bathroom?</p> <p>24 A. I couldn't. Sometimes I just ran</p>	<p>1 MR. SHEA: I don't have anything</p> <p>2 further.</p> <p>3 THE REPORTER: Can I just ask you</p> <p>4 gentlemen how you would like your</p> <p>5 transcripts?</p> <p>6 MR. GRIGGS: A regular is fine.</p> <p>7 MR. SHEA: Mini and the word index.</p> <p>8 THE REPORTER: Thank you.</p> <p>9</p> <p>10 (Deposition concluded at 12:15 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 75	Page 77
<p>1 right in there. I mean, there was like nothing</p> <p>2 I could do, you know, but they told me that</p> <p>3 that's not appropriate to come to work like</p> <p>4 that.</p> <p>5 Q. Who said that it was inappropriate</p> <p>6 to come to work like that?</p> <p>7 A. One of the supervisors that was on</p> <p>8 11 to 7.</p> <p>9 Q. And what was her name?</p> <p>10 A. I don't recall.</p> <p>11 Q. Is it a female?</p> <p>12 A. I believe it was at the time. I'm</p> <p>13 not sure.</p> <p>14 Q. Did you ever request that you be</p> <p>15 allowed to go to the bathroom frequently, in</p> <p>16 writing?</p> <p>17 A. No, it was not in writing.</p> <p>18 Q. Did you specify how frequently and</p> <p>19 for what duration your visits to the bathroom</p> <p>20 would be accommodated?</p> <p>21 A. No, because it changed all the</p> <p>22 time.</p> <p>23 MR. GRIGGS: I don't think I have</p> <p>24 anything further.</p>	<p>1 I, DAWN L. HALCISAK, a Notary Public, do</p> <p>2 hereby certify that WENDY GAUTHIER appeared</p> <p>3 before me, satisfactorily identified herself, on</p> <p>4 the 5th day of March, 2006, at the offices of</p> <p>5 CATUOGNO COURT REPORTING, 446 Main Street, 18th</p> <p>6 Floor, Worcester, MA, and was by me duly sworn</p> <p>7 to testify to the truth and nothing but the</p> <p>8 truth as to her knowledge touching and</p> <p>9 concerning the matters in controversy in this</p> <p>10 cause; that she was thereupon examined upon her</p> <p>11 oath and said examination reduced to writing by</p> <p>12 me; and that the statement is a true record of</p> <p>13 the testimony given by the witness, to the best</p> <p>14 of my knowledge and ability.</p> <p>15 I further certify that I am not a relative</p> <p>16 or employee of counsel/attorney for any of the</p> <p>17 parties, nor a relative or employee of such</p> <p>18 parties, nor am I financially interested in the</p> <p>19 outcome of the action.</p> <p>20 WITNESS MY HAND this 21st day of March,</p> <p>21 2007.</p> <p>22</p> <p>23 Dawn L. Halcisak My Commission expires:</p> <p>24 Notary Public October 2, 2009</p>

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21 (Pages 78 to 80)

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<p>1 Today's date: March 21, 2007</p> <p>2 To: K. SCOTT GRIGGS, ESQ.</p> <p>3 Copied to: MICHAEL O. SHEA, ESQ.</p> <p>4 From: Dawn L. Halcisak</p> <p>5 Deposition of: WENDY GAUTHIER</p> <p>6 Taken: MARCH 5, 2007</p> <p>7 Action: GAUTHIER</p> <p>8 vs.</p> <p>9 SUNHEALTH SPECIALTY SVS.</p> <p>10 & SUNBRIDGE HEALTHCARE</p> <p>11</p> <p>12 Enclosed is a copy of the deposition of</p> <p>13 WENDY GAUTHIER. Pursuant to the Rules of</p> <p>14 Civil Procedure, Ms. Gauthier has thirty days to</p> <p>15 sign the deposition from today's date.</p> <p>16 Please have Ms. Gauthier sign the enclosed</p> <p>17 signature page. If there are any errors, please</p> <p>18 have her mark the page, line and error on the</p> <p>19 enclosed correction sheet. She should not mark</p> <p>20 the transcript itself. This addendum should be</p> <p>21 forwarded to all interested parties.</p> <p>22 Thank you for your cooperation in this</p> <p>23 matter.</p> <p>24</p>	<p>1 CORRECTION SHEET</p> <p>2 DEPONENT: WENDY GAUTHIER</p> <p>3 CASE: GAUTHIER VS. SUNHEALTH SPECIALTY</p> <p>4 SVS. & SUNBRIDGE HEALTHCARE</p> <p>5 DATE TAKEN: MARCH 5, 2007</p> <p>6 *****</p> <p>7 PAGE / LINE / CHANGE OR CORRECTION AND REASON</p> <p>8 *****</p> <p>9 / /</p> <p>10 / /</p> <p>11 / /</p> <p>12 / /</p> <p>13 / /</p> <p>14 / /</p> <p>15 / /</p> <p>16 / /</p> <p>17 / /</p> <p>18 / /</p> <p>19 / /</p> <p>20 / /</p> <p>21 / /</p> <p>22 / /</p> <p>23 / /</p> <p>24 / /</p>
<p>Page 79</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3 CIVIL ACTION NO.: 05CV40119-FDS</p> <p>4</p> <p>5 *****</p> <p>6 WENDY GAUTHIER, *</p> <p>7 Plaintiff, *</p> <p>8 Vs. *</p> <p>9 SUNHEALTH SPECIALTY *</p> <p>10 SERVICES, INC., and *</p> <p>11 SUNBRIDGE HEALTHCARE *</p> <p>12 CORPORATION, *</p> <p>13 Defendant. *</p> <p>14 *****</p> <p>15</p> <p>16 I, WENDY GAUTHIER, do hereby certify,</p> <p>17 under the pains and penalties of perjury, that</p> <p>18 the foregoing testimony is true and accurate, to</p> <p>19 the best of my knowledge and belief.</p> <p>20 WITNESS MY HAND, this ____ day of ____</p> <p>21 2007.</p> <p>22</p> <p>23 _____</p> <p>24 WENDY GAUTHIER</p> <p>DLH</p>	

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EXHIBIT 3

STEPHEN G. COPPER

February 8, 2007

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3

4

5 *****

6 WENDY GAUTHIER, *

7 Plaintiff *

8 vs. *No.: 05cv40119-FDS

9 SUNHEALTH SPECIALTY *

10 SERVICES, INC. and SUNBRIDGE *

11 HEALTHCARE CORPORATION, *

12 Defendants *

13 *****

14

15

16 DEPOSITION OF: STEPHEN G. COPPER

17 CATUOGNO COURT REPORTING SERVICES

18 446 Main Street

19 Worcester, Massachusetts

20 February 8, 2007 10:12 a.m.

21

22

23 Elisabeth Zahariadis

24 Certified Shorthand Reporter

CATUOGNO COURT REPORTING SERVICES

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2 (Pages 2 to 5)

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF MICHAEL O. SHEA, P.C.</p> <p>5 451 Main Street</p> <p>6 Wilbraham, MA 01095</p> <p>7 BY: MICHAEL O. SHEA, ESQ.</p> <p>8 (413) 596-8005 FAX 596-8095</p> <p>9</p> <p>10 Representing the Defendant:</p> <p>11 LAWSON & WEITZEN, LLP</p> <p>12 88 Black Falcon Avenue</p> <p>13 Boston, MA 02210</p> <p>14 BY: K. SCOTT GRIGGS, ESQ.</p> <p>15 (617) 439-4990 FAX 439-3987</p> <p>16</p> <p>17 In attendance: Wendy Gauthier</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 STEPHEN G. COPPER, Deponent, having first</p> <p>2 been satisfactorily identified and duly sworn,</p> <p>3 deposes and states as follows:</p> <p>4</p> <p>5 (Exhibit 1, Notice, marked)</p> <p>6</p> <p>7</p> <p>8 EXAMINATION BY MR. SHEA:</p> <p>9</p> <p>10 Q. Can you state your full name for</p> <p>11 the record, please?</p> <p>12 A. Stephen Gerard Copper.</p> <p>13 Q. Can you state your current</p> <p>14 residential address, please?</p> <p>15 A. 45 Lebeaux Drive, Shrewsbury.</p> <p>16 Q. How long have you lived there?</p> <p>17 A. Two and a half years.</p> <p>18 Q. Who do you live with?</p> <p>19 A. Alone.</p> <p>20 Q. Are you currently employed?</p> <p>21 A. Yes.</p> <p>22 Q. Where are you employed?</p> <p>23 A. Ros Common Health Care.</p> <p>24 Q. Where is that located?</p>
Page 3	Page 5
<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: STEPHEN G. COPPER</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Shea 4</p> <p>7 Mr. Griggs 111</p> <p>8</p> <p>9 EXHIBIT: PAGE:</p> <p>10 Exhibit 1, Notice.....4</p> <p>11 Exhibit 2, Employee #2 File.....63</p> <p>12 Exhibit 3, Employee #5 File.....77</p> <p>13 Exhibit 4, Employee #6 File.....83</p> <p>14 Exhibit 5, Employee #7 File.....87</p> <p>15 Exhibit 6, Employee #9 File.....90</p> <p>16 Exhibit 7, Employee #10 File.....97</p> <p>17 Exhibit 8, Employee #13 File.....101</p> <p>18 Exhibit 9, Employee #15 File.....102</p> <p>19 Exhibit 10, Employee #18 File.....103</p> <p>20 Exhibit 11, Employee #22 File.....106</p> <p>21 Exhibit 12, Employee #24 File.....107</p> <p>22 Exhibit 13, Employee #26 File.....109</p> <p>23</p> <p>24 Mr. Shea retained exhibits.</p>	<p>1 A. West Roxbury, Massachusetts.</p> <p>2 Q. How long have you worked there?</p> <p>3 A. Two years.</p> <p>4 Q. What is your position?</p> <p>5 A. Administrator.</p> <p>6 Q. You are an administrator there?</p> <p>7 A. (Witness complying)</p> <p>8 Q. Yes?</p> <p>9 A. Yes.</p> <p>10 MR. GRIGGS: By the way, if you</p> <p>11 want to put the usual stipulations on the</p> <p>12 record.</p> <p>13 MR. SHEA: Reserve all objections</p> <p>14 to the time of trial. Do you want to have</p> <p>15 him read and sign?</p> <p>16 MR. GRIGGS: Read and sign, 30</p> <p>17 days. All objections except as to the form</p> <p>18 will be reserved until time of trial.</p> <p>19 MR. SHEA: Yes.</p> <p>20 MR. GRIGGS: Go ahead.</p> <p>21 Q. (By Mr. Shea) Have you ever been</p> <p>22 deposed before?</p> <p>23 A. Yes.</p> <p>24 Q. How many times have you been</p>

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3 (Pages 6 to 9)

Page 6	Page 8
<p>1 deposed?</p> <p>2 A. Yes, once.</p> <p>3 Q. When were you deposed?</p> <p>4 A. 2003.</p> <p>5 Q. What type of case was it?</p> <p>6 A. I don't remember. It was probably</p> <p>7 a similar situation to this.</p> <p>8 Q. It was an employment case?</p> <p>9 A. An employment case, nursing home</p> <p>10 employee.</p> <p>11 Q. Do you know which nursing home it</p> <p>12 was?</p> <p>13 A. SunBridge.</p> <p>14 Q. Do you know which court it was in,</p> <p>15 state or federal?</p> <p>16 A. State, I believe.</p> <p>17 Q. Do you know which county it was out</p> <p>18 of, was it in Worcester?</p> <p>19 A. It was Worcester.</p> <p>20 Q. Do you know who the lawyers were in</p> <p>21 that case?</p> <p>22 A. No.</p> <p>23 Q. Do you know what type of</p> <p>24 employment case it was?</p>	<p>1 A. No.</p> <p>2 Q. Have you ever been a witness in a</p> <p>3 case testifying at trial or a court proceeding?</p> <p>4 A. No.</p> <p>5 Q. Have you ever been a plaintiff or a</p> <p>6 defendant in a case?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been charged with a</p> <p>9 crime?</p> <p>10 A. No.</p> <p>11 Q. How old are you?</p> <p>12 A. 51.</p> <p>13 Q. Just trying to get some background.</p> <p>14 Where did you go to high school?</p> <p>15 A. Burncoat High School, Worcester.</p> <p>16 Q. When did you graduate?</p> <p>17 A. '73.</p> <p>18 Q. Where did you go to school beyond</p> <p>19 that?</p> <p>20 A. Nichols College.</p> <p>21 Q. When did you graduate?</p> <p>22 A. '80.</p> <p>23 Q. With what type of degree?</p> <p>24 A. P□S□BA□.</p>
Page 7	Page 9
<p>1 A. No.</p> <p>2 Q. Just a couple of ground rules which</p> <p>3 you probably already heard these in your first</p> <p>4 deposition.</p> <p>5 If there's a question you don't</p> <p>6 understand, can you have me repeat the question</p> <p>7 or otherwise I'll assume you understand it?</p> <p>8 A. Okay.</p> <p>9 Q. You have to answer audibly for the</p> <p>10 record?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Or an mm-hmm?</p> <p>13 A. All right.</p> <p>14 Q. You have to use a yes or no so the</p> <p>15 stenographer can type what you're saying. Also,</p> <p>16 if I ask a question, I would just ask that you</p> <p>17 wait until I finish asking the question before</p> <p>18 you start to answer even though you may know the</p> <p>19 answer and I'll do the same. I'll wait until</p> <p>20 you answer before I ask the next question so the</p> <p>21 stenographer can type a clean record.</p> <p>22 You are not under the influence of</p> <p>23 anything that would impair your ability to</p> <p>24 answer questions today?</p>	<p>1 Q. PSBA?</p> <p>2 A. Public administration.</p> <p>3 Q. From there, where did you go to</p> <p>4 school?</p> <p>5 A. Seton Hall University, Immaculate</p> <p>6 Conception Seminary.</p> <p>7 Q. Did you graduate with a degree?</p> <p>8 A. Yes.</p> <p>9 Q. What year was that?</p> <p>10 A. 1995.</p> <p>11 Q. What type of degree was that?</p> <p>12 A. Masters in Divinity.</p> <p>13 Q. Do you have any education beyond</p> <p>14 that?</p> <p>15 A. No.</p> <p>16 Q. Do you have any formal training</p> <p>17 beyond what you've described?</p> <p>18 A. No.</p> <p>19 Q. After high school, just trying to</p> <p>20 get a snapshot of your work history, after high</p> <p>21 school what was your first full-time job?</p> <p>22 A. Worked part time in a nursing home,</p> <p>23 a local nursing home in Worcester.</p> <p>24 Q. Which was?</p>

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4 (Pages 10 to 13)

Page 10	Page 12
<p>1 A. Heywood Valley.</p> <p>2 Q. Is that still there?</p> <p>3 A. I believe it's under a different</p> <p>4 ownership.</p> <p>5 Q. What is that?</p> <p>6 A. It's a long-term care facility.</p> <p>7 Q. What is the name now, do you know?</p> <p>8 A. I don't recall. It's been sold, I</p> <p>9 believe, but I don't know the name.</p> <p>10 Q. Where was Heywood Valley?</p> <p>11 A. Worcester, Acton Street.</p> <p>12 Q. How long did you work there?</p> <p>13 A. Until 1990 in various capacities.</p> <p>14 Q. So from '74?</p> <p>15 A. '74 to 1990.</p> <p>16 Q. Can you tell me what you did for</p> <p>17 Heywood Valley Nursing Home?</p> <p>18 A. I was part time and then full time,</p> <p>19 department head and obtained a nursing home</p> <p>20 administrator's license. Assistant</p> <p>21 administrator and then I went to Immaculate</p> <p>22 Conception.</p> <p>23 Q. From there, you went to school?</p> <p>24 A. Yes.</p>	<p>1 A. For the facility I was in?</p> <p>2 Q. Yes.</p> <p>3 A. Yes, I was the only administrator.</p> <p>4 Q. What facility was that?</p> <p>5 A. It was SunBridge of North Shore in</p> <p>6 Lynn.</p> <p>7 Q. Do you know the address?</p> <p>8 A. No.</p> <p>9 Q. Is it still there?</p> <p>10 A. The building is, the facility is</p> <p>11 closed.</p> <p>12 Q. How long did you work there?</p> <p>13 A. Two months.</p> <p>14 Q. From there, where did you go?</p> <p>15 A. From Lynn I went to Lexington.</p> <p>16 Q. Is that another facility in</p> <p>17 Lexington?</p> <p>18 A. Yes.</p> <p>19 Q. For the same company?</p> <p>20 A. Yes.</p> <p>21 Q. How long were you there?</p> <p>22 A. Three months.</p> <p>23 Q. What was your position there?</p> <p>24 A. Administrator.</p>
Page 11	Page 13
<p>1 Q. That was over what time period?</p> <p>2 A. 1990 to 1995.</p> <p>3 Q. Full time at school?</p> <p>4 A. Yes.</p> <p>5 Q. Then from there, where did you</p> <p>6 work?</p> <p>7 A. St. George's Church on Holden</p> <p>8 Street -- Brattle Street in Worcester.</p> <p>9 Q. Over what time period did you work</p> <p>10 there?</p> <p>11 A. 1999 to 2002.</p> <p>12 Q. What did you do at the church?</p> <p>13 A. I was the parochial vicar, the</p> <p>14 assistant pastor.</p> <p>15 Q. Then from there, where were you</p> <p>16 employed?</p> <p>17 A. SunBridge.</p> <p>18 Q. When did you start at SunBridge?</p> <p>19 A. 2002.</p> <p>20 Q. When you were hired at SunBridge,</p> <p>21 what were you hired as?</p> <p>22 A. An administrator.</p> <p>23 Q. Was there only one administrator at</p> <p>24 SunBridge when you were hired?</p>	<p>1 Q. Why did you leave the Lynn</p> <p>2 location?</p> <p>3 A. They were interim, that's what I</p> <p>4 was hired for.</p> <p>5 Q. They were meant to be temporary?</p> <p>6 A. Yes.</p> <p>7 Q. The same with Lexington?</p> <p>8 A. Yes.</p> <p>9 Q. From Lexington, where did you go?</p> <p>10 A. Lawrence.</p> <p>11 Q. Where was the facility in</p> <p>12 Lexington? Do you know what street it was on?</p> <p>13 A. Route 2, I believe.</p> <p>14 Q. Is there a name for the facility?</p> <p>15 A. It was SunBridge. I believe it was</p> <p>16 SunBridge for Lexington.</p> <p>17 Q. Where was the Lawrence location,</p> <p>18 what street was that on?</p> <p>19 A. That was Lawrence, I don't recall</p> <p>20 the name of the street.</p> <p>21 Q. Was there a name of the facility?</p> <p>22 A. Again, SunBridge.</p> <p>23 Q. At Lawrence?</p> <p>24 A. Yes. Town Manor.</p>

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5 (Pages 14 to 17)

Page 14	Page 16
<p>1 Q. That's the Lawrence facility?</p> <p>2 A. Right.</p> <p>3 Q. How long were you at Lawrence?</p> <p>4 A. 13 months.</p> <p>5 Q. Why did you leave that location?</p> <p>6 A. They closed the facility.</p> <p>7 Q. Then where did you go?</p> <p>8 A. To Oxford.</p> <p>9 Q. When was that, do you recall what</p> <p>10 year was that?</p> <p>11 A. That was 2003, November of 2003 to</p> <p>12 June of 2005.</p> <p>13 Q. Did you leave SunBridge in June of</p> <p>14 2005?</p> <p>15 A. Yes.</p> <p>16 Q. Why did you leave SunBridge?</p> <p>17 A. I was offered a job as Ros Common.</p> <p>18 Q. You left voluntarily?</p> <p>19 A. Yes.</p> <p>20 Q. Were you a temporary administrator</p> <p>21 in Lawrence as well?</p> <p>22 A. No, I was permanent.</p> <p>23 Q. Administrator?</p> <p>24 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. That's the same Ha Rd function that</p> <p>3 department heads had and staff coordinators as</p> <p>4 well?</p> <p>5 A. Yes.</p> <p>6 Q. What's the difference between a</p> <p>7 department head and staff coordinator?</p> <p>8 A. The staff development coordinator</p> <p>9 primarily is a person who is usually a nurse who</p> <p>10 implements the nursing program, trains</p> <p>11 employees, various job responsibilities.</p> <p>12 Q. Since your employment at Heywood</p> <p>13 Valley, have you ever been reprimanded at a job?</p> <p>14 A. No.</p> <p>15 Q. No warnings?</p> <p>16 A. No.</p> <p>17 Q. You had no verbal or written</p> <p>18 warnings?</p> <p>19 A. No.</p> <p>20 Q. Meaning correct?</p> <p>21 A. Yes, correct.</p> <p>22 Q. You've never been terminated from a</p> <p>23 job before?</p> <p>24 A. No.</p>
Page 15	Page 17
<p>1 Q. At Oxford, same thing, was that a</p> <p>2 permanent position as administrator?</p> <p>3 A. Yes.</p> <p>4 Q. Did you always have the same job</p> <p>5 responsibilities as an administrator throughout</p> <p>6 your course of employment at SunBridge?</p> <p>7 A. Yes.</p> <p>8 Q. Can you just briefly tell me what</p> <p>9 those responsibilities were?</p> <p>10 A. To oversee the overall operation of</p> <p>11 the facility. Adhere to Medicare and Medicaid</p> <p>12 guidelines. Enforce policies and procedures of</p> <p>13 SunBridge. To provide highest quality of</p> <p>14 patient care possible. Those are pretty much,</p> <p>15 financial responsibilities.</p> <p>16 Q. Enforcing policies and procedures,</p> <p>17 did that include any kind of H Rt function?</p> <p>18 A. Minimal. We had a department head</p> <p>19 and we had a staff development coordinator.</p> <p>20 Q. What would they do, Hl R-wise?</p> <p>21 A. Ho R-v wise they would interview, they</p> <p>22 would train, they would review policies,</p> <p>23 procedures.</p> <p>24 Q. With lower level employees?</p>	<p>1 Q. What were your Hn Rt functions as an</p> <p>2 administrator at Sandalwood?</p> <p>3 A. Administrator, I would review any</p> <p>4 disciplinary actions that were brought to my</p> <p>5 attention. Make sure that there was fair</p> <p>6 treatment of the employees, that policies and</p> <p>7 procedures were followed.</p> <p>8 Q. What type of disciplinary would you</p> <p>9 review?</p> <p>10 A. Written warnings, terminations.</p> <p>11 Q. Anything else?</p> <p>12 A. No.</p> <p>13 Q. Did you do that on a consistent</p> <p>14 basis?</p> <p>15 A. Yes.</p> <p>16 Q. Was there a progressive discipline</p> <p>17 policy at Sandalwood?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me what that was?</p> <p>20 A. Verbal warnings were issued</p> <p>21 initially followed by written warnings.</p> <p>22 Q. Followed by what?</p> <p>23 A. Further disciplinary action,</p> <p>24 suspension and/or termination.</p>

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6 (Pages 18 to 21)

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1 Q. Would an employee get a set number
2 of verbal warnings before they get a written
3 warning?

4 A. Yes.

5 Q. What was the policy in that
6 respect?

7 A. Verbal warnings were used mostly
8 with the hopes of changing the behavior that was
9 being addressed and retaining the employee.

10 Q. How many verbal warnings would they
11 get before they got a written one?

12 A. A minimum of two verbal warnings
13 before it was reduced to writing.

14 Q. How many written warnings do they
15 get before the next disciplinary action is
16 taken?

17 A. Two.

18 Q. Or the next level of disciplinary
19 action is taken?

20 A. Two.

21 Q. Two verbal warnings and two written
22 warnings, right?

23 A. Yes.

24 Q. Then what would happen?

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1 A. Then, again, we would review the
2 employee, the nature of the events and determine
3 whether to retain or terminate the employee.

4 MR. SHEA: By the way, I've marked
5 as Exhibit 1 the 30(b)(6) notice and that
6 we're going to treat Mr. Copper as both a
7 30(b)(6) witness in this deposition and a
8 witness in his own capacity outside of the
9 30(b)(6) capacity.

10 MR. GRIGGS: Yes, that's agreeable.

11 Q. (By Mr. Shea) I'm trying to get a
12 handle on what happens after two written
13 warnings, does that depend on the facts and
14 circumstances of each case or do you then follow
15 a progressive discipline policy that mandates
16 something happened after the two written
17 warnings?

18 A. Generally after the two written
19 warnings is termination.

20 Q. So suspension was not part of the
21 progressive discipline policy, the normal
22 progressive discipline policy?

23 A. Again, depending on the nature of
24 the events. Some employees were suspended

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1 without pay for a period of two to three days.

2 Q. What kind of offense would that
3 depend on, termination versus suspension?

4 A. Oftentimes if there was a case of
5 an alleged abuse, an investigation would need to
6 proceed.

7 Q. Are there any other instances where
8 suspension was appropriate?

9 A. Excessive absenteeism.

10 Q. So employees would also get
11 suspended if they were excessively absent as
12 well prior to termination?

13 A. Yes.

14 Q. Is there a certain length of
15 suspension or a certain number of suspensions
16 that an employee would get as part of this
17 progressive discipline policy before they were
18 terminated?

19 A. Generally there is one.

20 Q. Is this progressive discipline
21 policy that you described in writing anywhere,
22 do you recall?

23 A. I believe so, yes.

24 Q. Where do you believe it's located

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1 in writing?

2 A. In the policies and procedures book
3 at the individual facilities.

4 Q. Which policies and procedure book
5 are you referring to?

6 A. SunBridge has a compilation of
7 employee policies and procedures for every
8 aspect of the operation. One of them addresses
9 the issues of employees and attendance,
10 punctuality, appearance, inservice training,
11 responsibility.

12 Q. Where are those policies and
13 procedures kept, the written?

14 A. Generally in the administrator's
15 office, director of nurse's office and/or the
16 staff development coordinator's office.

17 Q. Do you have a memory of where they
18 were kept when you were employed at Sandalwood?

19 A. I did not have the entire volume of
20 all of them, but they had, each department had
21 their own, their own volume pertaining to their
22 department.

23 Q. Do you remember Wendy Gauthier
24 working at Sandalwood?

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<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember over what time</p> <p>3 period she worked there?</p> <p>4 A. She was employed I believe when I</p> <p>5 started. I'm not certain of her dates of</p> <p>6 employment, no.</p> <p>7 Q. Do you remember what years she was</p> <p>8 there, can you sort of focus in on that?</p> <p>9 A. It would be when I arrived to 2003,</p> <p>10 November.</p> <p>11 Q. To the time she was terminated?</p> <p>12 A. To the time she was terminated.</p> <p>13 Q. Do you have any sense for how long</p> <p>14 she was there?</p> <p>15 A. As an employee?</p> <p>16 Q. Yes.</p> <p>17 A. Just in the time frame that I was</p> <p>18 the administrator.</p> <p>19 Q. Can you just describe the facility</p> <p>20 for me, overall, just a general description of</p> <p>21 what Sandalwood was about when you were there?</p> <p>22 A. It's a 77-bed facility located on</p> <p>23 Pine Street in Oxford. It was a skilled nursing</p> <p>24 facility.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Ann Kendall.</p> <p>2 Q. Those policies and procedures that</p> <p>3 Ann Kendall had, you believe she had those in</p> <p>4 writing?</p> <p>5 A. Yes.</p> <p>6 Q. Did those policies and procedures</p> <p>7 that she had contain progressive discipline</p> <p>8 policies that you've described?</p> <p>9 A. Yes.</p> <p>10 Q. Did same policy that you described</p> <p>11 apply to Wendy Gauthier?</p> <p>12 A. Yes.</p> <p>13 Q. Other than Ann Kendall, did anyone</p> <p>14 else have a copy of the policies and procedure</p> <p>15 manual for that department, the nursing</p> <p>16 department?</p> <p>17 A. No.</p> <p>18 Q. Do you know where they kept those</p> <p>19 policies and procedures?</p> <p>20 A. Her office.</p> <p>21 Q. Was there a progressive discipline</p> <p>22 policy located in the handbook, was there a</p> <p>23 handbook?</p> <p>24 A. Employee handbook?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. For the record, what does that</p> <p>2 mean, skilled nursing facility?</p> <p>3 A. That we received payment from</p> <p>4 Medicare, Medicaid, followed the CMS guidelines</p> <p>5 for health care.</p> <p>6 Q. Was it a nursing home?</p> <p>7 A. A nursing home.</p> <p>8 Q. The patients that you had there,</p> <p>9 many of them were long term, I assume?</p> <p>10 A. Yes.</p> <p>11 Q. What department did Wendy Gauthier</p> <p>12 work in?</p> <p>13 A. The nursing department.</p> <p>14 Q. Did the nursing department have</p> <p>15 written guidelines, policies and procedures that</p> <p>16 you described?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who kept those</p> <p>19 policies and procedures, where they were kept?</p> <p>20 A. The director of nurses would have a</p> <p>21 copy and I believe the staff development</p> <p>22 coordinator would.</p> <p>23 Q. Who was the director who held those</p> <p>24 two positions at the time Wendy Gauthier worked?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Yes.</p> <p>2 A. I'm not certain. I can't recall if</p> <p>3 we had one at SunBridge.</p> <p>4 Q. The policies and procedures that</p> <p>5 Ann Kendall had in her office, were those for</p> <p>6 her use or were those for any employee who</p> <p>7 wanted to walk in and take a look at them?</p> <p>8 A. Mostly for her use.</p> <p>9 Q. Do you know if they were open to</p> <p>10 the other employees to look at or no?</p> <p>11 A. I would say yes. I do not recall</p> <p>12 anyone asking to see them, but there would be no</p> <p>13 reason to deny access to them.</p> <p>14 Q. Do you know whether any of the</p> <p>15 employees were trained on the policies and</p> <p>16 procedures that you are describing that Ann</p> <p>17 Kendall held in her office?</p> <p>18 A. At the time of hire, many of those</p> <p>19 policies and procedures were discussed. I don't</p> <p>20 think every page of every book was reviewed.</p> <p>21 Q. Do you know whether the policies</p> <p>22 and procedures were discussed with Wendy</p> <p>23 Gauthier at SunBridge?</p> <p>24 A. That, I would not know.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Do you know whether the policies 2 and procedures, specifically the progressive 3 discipline policy that you outlined was 4 uniformly applied to all employees in the 5 nursing department? 6 A. I believe it was. 7 Q. Why do you say that? 8 A. Because there was, we would not 9 discriminate against employees. It was 10 impartial treatment to all employees. 11 Q. Who is responsible for enforcing a 12 progressive discipline policy? 13 A. The department. 14 Q. And the nursing department? 15 A. Yes. 16 Q. So that was Ann Kendall? 17 A. Yes. 18 Q. Do you know whether she followed 19 the progressive discipline policy with respect 20 to Ms. Gauthier or not? 21 A. Yes, I would say yes. 22 Q. What do you base that on? 23 A. By my reviewing of what her 24 procedure was in handling each case of employee</p>	<p style="text-align: right;">Page 28</p> <p>1 answer if you understand. 2 THE WITNESS: I believe she 3 followed the policy and procedure as I 4 outlined. 5 Q. (By Mr. Shea) What did she do, do 6 you know? 7 A. It was addressed verbally and 8 followed by written warnings. 9 Q. What was addressed verbally? 10 A. The disciplinary action that she 11 was taking at that time. 12 Q. Did you approve all disciplinary 13 action that was administered by Ann Kendall to 14 Wendy Gauthier? 15 A. Yeah. 16 Q. Do you have a recollection of the 17 disciplinary action taken? 18 A. Somewhat. 19 Q. Can you tell me what you do 20 remember? 21 A. I believe Ann Kendall addressing 22 with me that Wendy Gauthier was pregnant at the 23 time of her employment with us. I believe that 24 Ann requested a doctor's note due to the nature</p>
<p style="text-align: right;">Page 27</p> <p>1 discipline. 2 Q. Every time Ann Kendall disciplined 3 an employee, and that would be her position, 4 right, that would be part of her role is to 5 initiate discipline in the nursing department if 6 someone needed to be disciplined? 7 A. Yes. 8 Q. It would be her responsibility and 9 solely her responsibility? 10 A. Yes. 11 Q. You would review that? 12 A. Yes. 13 Q. So if Ann Kendall was going to give 14 a verbal warning, that would not come to your 15 attention? 16 A. In most cases it would. I wanted 17 to know only in the event that the employee came 18 to me. And it was an open-door policy, so if 19 the employee came to me, I wanted to know the 20 detail at least given a head's up. 21 Q. You don't have a specific 22 recollection, do you, of the disciplinary action 23 that Ann Kendall administered to Wendy Gauthier? 24 MR. GRIGGS: Form. Go ahead and</p>	<p style="text-align: right;">Page 29</p> <p>1 of the work that Wendy was performing. I 2 believe, I cannot say, I believe that Ann 3 received the note from the doctor and Wendy was 4 apparently a no call/no show, I know on two 5 occasions. It was addressed with Wendy, he her 6 no call/no show by Ann Kendall. 7 Q. Both of them? 8 A. Both of them. 9 Q. How were they addressed? 10 A. With inquiry of what her status 11 was. Policy was, no call/no show was 12 termination. 13 Q. There were two no call/no shows you 14 said? 15 A. Yes. 16 Q. When was the first one, do you 17 recall? 18 A. Somewhere between my arriving in 19 November and Wendy's termination date. 20 Q. What happened as a result of that 21 first no call/no show? 22 A. We chose to talk to Wendy to see 23 what her problem was. 24 Q. Who talked to Wendy?</p>

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<p>1 A. I believe Ann Kendall did.</p> <p>2 Q. Do you know whether she did?</p> <p>3 A. No, I do not know if it was Ann</p> <p>4 Kendall.</p> <p>5 Q. I don't want you to guess today.</p> <p>6 A. Okay.</p> <p>7 Q. I want your specific memory not</p> <p>8 what would have been?</p> <p>9 A. It would be Ann Kendall then</p> <p>10 because Ann Kendall would be the only one.</p> <p>11 Q. You don't have a specific memory of</p> <p>12 her talking to Wendy Gauthier on the first</p> <p>13 occasion that you say there was a no call/no</p> <p>14 show?</p> <p>15 A. Yes, she came to me and said she</p> <p>16 talked to Wendy Gauthier about her no call/no</p> <p>17 show.</p> <p>18 Q. What did she say?</p> <p>19 A. That we decided to not terminate,</p> <p>20 but to allow it to happen this particular time.</p> <p>21 The second time there was a no call/no show, is</p> <p>22 when we decided to terminate Wendy Gauthier.</p> <p>23 Q. Who made that decision?</p> <p>24 A. Ann Kendall and myself.</p>	<p>1 A. We go with two.</p> <p>2 Q. You go with two?</p> <p>3 A. I believe policy was one. No</p> <p>4 call/no show was equivalent to self-termination.</p> <p>5 Q. When you say you believe policy was</p> <p>6 one, is there a written policy?</p> <p>7 A. A written policy, right.</p> <p>8 Q. That says one no call/no show</p> <p>9 results in termination?</p> <p>10 A. Yes.</p> <p>11 Q. You've seen that policy?</p> <p>12 A. Yes.</p> <p>13 Q. Is that separate from the policy</p> <p>14 that Ann Kendall has in her office, policies and</p> <p>15 procedures she had?</p> <p>16 A. No.</p> <p>17 Q. It was part of that policy as well?</p> <p>18 A. Yes.</p> <p>19 Q. Did you ever see the physical</p> <p>20 policy and procedures that Ann Kendall had in</p> <p>21 her office?</p> <p>22 A. Yes.</p> <p>23 Q. Who created those policies and</p> <p>24 procedures?</p>
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<p>1 Q. Equally?</p> <p>2 A. Equally.</p> <p>3 Q. What were the circumstances of the</p> <p>4 first no call/no show?</p> <p>5 A. She did not report to work.</p> <p>6 Q. Do you know why? Did you get an</p> <p>7 explanation from Ms. Gauthier as to why?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Do you remember in what month of</p> <p>10 what year she first committed a no call/no show?</p> <p>11 A. No.</p> <p>12 Q. Do you know the circumstances of</p> <p>13 the second no call/no show?</p> <p>14 A. No.</p> <p>15 Q. Was Ms. Gauthier ever given a</p> <p>16 verbal warning or no?</p> <p>17 A. Yes.</p> <p>18 Q. For what?</p> <p>19 A. For the no call/no show.</p> <p>20 Q. For the first?</p> <p>21 A. The first no call/no show.</p> <p>22 Q. How many no call/no shows, is there</p> <p>23 a certain number of no call/no shows that an</p> <p>24 employee gets before they are terminated?</p>	<p>1 A. SunBridge.</p> <p>2 Q. Who at SunBridge?</p> <p>3 A. Their corporate, they would</p> <p>4 distribute.</p> <p>5 Q. Were they updated?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever read them thoroughly?</p> <p>8 A. Yes.</p> <p>9 Q. Sitting here today you have a</p> <p>10 pretty good understanding of them?</p> <p>11 A. From what I can recall.</p> <p>12 Q. Back to Wendy Gauthier. How many</p> <p>13 verbal warnings did she get, one you said?</p> <p>14 A. I believe it was two verbal</p> <p>15 warnings.</p> <p>16 Q. Didn't you just tell me it was one</p> <p>17 verbal warning for the first no call/no show?</p> <p>18 A. Right, followed with a second one.</p> <p>19 Q. What was that verbal warning for?</p> <p>20 A. The same offense.</p> <p>21 Q. For the second no call/no show?</p> <p>22 A. Yes.</p> <p>23 Q. She was terminated at some point?</p> <p>24 A. After the no call, the second no</p>

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<p>1 call/no show.</p> <p>2 Q. You just said she got a verbal</p> <p>3 warning after the second no call/no show, right?</p> <p>4 A. Right, and then we terminated. So</p> <p>5 it would be one verbal, the no call/no show, we</p> <p>6 terminated.</p> <p>7 Q. You just said she got two verbal</p> <p>8 warnings, did she get two verbal warnings?</p> <p>9 A. I'm going to say yes, we did it</p> <p>10 twice. And I thought it was she called out two</p> <p>11 times and then we terminated as patient care was</p> <p>12 being compromised.</p> <p>13 Q. Which patient care was being</p> <p>14 compromised?</p> <p>15 A. On the shift that she was assigned</p> <p>16 to work.</p> <p>17 Q. Do you know whether she had</p> <p>18 coverage for the no call/no show incident,</p> <p>19 whether she had arranged coverage for herself?</p> <p>20 A. No.</p> <p>21 Q. Was that a common thing to do?</p> <p>22 MR. GRIGGS: Form.</p> <p>23 Q. (By Mr. Shea) To be able to</p> <p>24 arrange coverage and move your schedule around?</p>	<p>1 Q. You just said there was the verbal</p> <p>2 one?</p> <p>3 A. I cannot recall the event. I know</p> <p>4 that there were two no call/no shows, that I</p> <p>5 know. There were two no call/no shows. The</p> <p>6 first one we let her slide.</p> <p>7 Q. Do you know whether, in fact, she</p> <p>8 received a written warning or no?</p> <p>9 A. I believe she did. Yes, I believe</p> <p>10 she did.</p> <p>11 Q. For what?</p> <p>12 A. For no call/no show.</p> <p>13 Q. For which one, you said there were</p> <p>14 two?</p> <p>15 A. I would say the second one.</p> <p>16 Q. You think she got a written warning</p> <p>17 for the second no call/no show?</p> <p>18 A. Yes.</p> <p>19 Q. Didn't you say she was terminated</p> <p>20 for the second no call/no show?</p> <p>21 A. After the warning was issued, I</p> <p>22 believe she was terminated after that second</p> <p>23 warning was issued.</p> <p>24 Q. Did she come back to work after the</p>
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<p>1 A. Yes, I believe employees had that</p> <p>2 right to do that with the approval of the</p> <p>3 nursing supervisor.</p> <p>4 Q. Do you know whether Wendy Gauthier</p> <p>5 had approval from the nursing supervisor to get</p> <p>6 her shift covered for the times that she was</p> <p>7 alleged to have committed a no call/no show?</p> <p>8 A. No, I wouldn't know that.</p> <p>9 Q. You don't know that?</p> <p>10 A. No.</p> <p>11 Q. Was that ever investigated by Ann</p> <p>12 Kendall, do you know?</p> <p>13 A. I don't know.</p> <p>14 Q. Was it ever investigated with</p> <p>15 anyone of that issue whether they had coverage?</p> <p>16 A. I don't recall ever hearing that.</p> <p>17 Q. Did Wendy Gauthier ever receive a</p> <p>18 written warning prior to termination from</p> <p>19 SunBridge?</p> <p>20 A. I believe she did.</p> <p>21 Q. When was that?</p> <p>22 A. I believe it was after the first.</p> <p>23 I think it was after the second no call/no show</p> <p>24 was the written warning.</p>	<p>1 second no call/no show?</p> <p>2 A. No.</p> <p>3 Q. She received a written warning for</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. And then she was immediately</p> <p>7 terminated?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you terminate her, why did</p> <p>10 you give her a written warning at that time if</p> <p>11 you terminated her, if you were terminating her</p> <p>12 anyway?</p> <p>13 A. We were terminating her because of</p> <p>14 the two offenses.</p> <p>15 Q. My question is why would you give</p> <p>16 her a written warning and a termination at the</p> <p>17 same time?</p> <p>18 A. We wanted something in writing for</p> <p>19 her. That was our policy to have a paper trail.</p> <p>20 Q. Well, a written warning is</p> <p>21 different than a termination?</p> <p>22 A. Well, then there was a termination.</p> <p>23 Q. And not a written warning?</p> <p>24 MR. GRIGGS: Can we take a second</p>

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<p>1 off the record, I just want to talk to my 2 client?</p> <p>3 MR. SHEA: Sure. Off the record.</p> <p>4 5 (A recess was taken)</p> <p>6 7 MR. SHEA: Back on the record.</p> <p>8 Q. (By Mr. Shea) Do you know whether 9 Wendy Gauthier ever received any training about 10 the policies and procedures at SunBridge?</p> <p>11 A. Yes.</p> <p>12 Q. Who provided that training?</p> <p>13 A. The staff development coordinator.</p> <p>14 Q. Who was that?</p> <p>15 A. I do not know who the person was 16 that employed Wendy.</p> <p>17 Q. Do you know whether, in fact, the 18 staff development coordinator gave Wendy or 19 provided Wendy Gauthier training?</p> <p>20 A. Yes.</p> <p>21 Q. Did you witness that yourself?</p> <p>22 A. No.</p> <p>23 Q. How do you know that?</p> <p>24 A. It was procedure before they were</p>	<p>1 completed and that's how it is submitted, that's 2 how an employee is put on payroll without the 3 necessary paperwork.</p> <p>4 Q. I'm not asking you what the policy 5 is. I'm asking you whether, in fact, the 6 paperwork was filed with respect to Wendy 7 Gauthier and whether you have specific personal 8 knowledge of that?</p> <p>9 A. No.</p> <p>10 Q. No, you do not?</p> <p>11 A. No.</p> <p>12 Q. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know whether Wendy Gauthier 15 received any kind of handbook at SunBridge?</p> <p>16 A. No.</p> <p>17 Q. You do not know?</p> <p>18 A. Do not know.</p> <p>19 Q. You said that you knew Wendy 20 Gauthier was pregnant?</p> <p>21 A. Yes.</p> <p>22 Q. While he was an employee there?</p> <p>23 A. Yes.</p> <p>24 Q. What was Wendy Gauthier's position,</p>
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<p>1 allowed to.</p> <p>2 Q. What I'm asking you, do you have 3 personal knowledge that this happened or are you 4 assuming it happened because it was procedure?</p> <p>5 A. It was procedure. It was not 6 personal knowledge, but she would not be allowed 7 to work the unit without being properly trained.</p> <p>8 Q. You don't know whether, in fact, 9 Wendy Gauthier was trained on the policies and 10 procedures that Ann Kendall had in her office, 11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. You don't know whether, in fact, 14 she was?</p> <p>15 A. She was.</p> <p>16 Q. Tell me when she was trained?</p> <p>17 A. At the time of her hire.</p> <p>18 Q. Were you there at the time of her 19 hire?</p> <p>20 A. No.</p> <p>21 Q. How do you know whether she was 22 trained?</p> <p>23 A. Because our policy is that everyone 24 goes through the training process. Paperwork is</p>	<p>1 she worked at Sandalwood, right?</p> <p>2 A. Yes.</p> <p>3 Q. The whole time she was there?</p> <p>4 A. Yes.</p> <p>5 Q. What was her position there?</p> <p>6 A. Nursing assistant.</p> <p>7 Q. When did she become pregnant in 8 relation to her termination of employment?</p> <p>9 A. I do not know.</p> <p>10 Q. Did you know she had complications 11 with her pregnancy?</p> <p>12 A. No, I did not know.</p> <p>13 Q. Ann Kendall never told you that?</p> <p>14 A. No.</p> <p>15 Q. Would she have brought that to your 16 attention?</p> <p>17 A. I would hope she would.</p> <p>18 Q. Why?</p> <p>19 A. Just for the well being of the 20 employee, it would be common.</p> <p>21 Q. Do you know whether Wendy Gauthier 22 was taking time off relating to the 23 complications with her pregnancy?</p> <p>24 A. I know that Wendy Gauthier took a</p>

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<p>1 lot of time off. I do not know if it was 2 related to her pregnancy. 3 Q. If it were relating to her 4 pregnancy and complications relating to her 5 pregnancy, should Ann Kendall have told you 6 that? 7 MR. GRIGGS: Form, facts not in 8 record. 9 THE WITNESS: She would have told 10 me. 11 Q. (By Mr. Shea) She would have told 12 you that? 13 A. Yes. 14 Q. Why? 15 A. I believe that's relevant to our 16 working relationship to know about an employee's 17 medical history and medical situation. 18 Q. Would that have made a difference 19 in your decision as to whether or not to give 20 her more leeway in terms of taking time off? 21 A. We would have reviewed it. 22 Q. It's possible? 23 A. It's possible, yes. 24 Q. Do you know whether Wendy Gauthier</p>	<p>1 Q. Who requested that note and why? 2 A. Ann Kendall. 3 Q. Why did she request that note? 4 A. To ensure that Wendy was capable of 5 doing her job. 6 Q. Why? 7 A. Because there was lifting. 8 Q. There was lifting? 9 A. Yes, she was responsible to lift 10 patients on her shift. 11 Q. You mean this was in relation to 12 her pregnancy? 13 A. Yes. 14 Q. Does SunBridge require that of all 15 pregnant employees to get a note from a doctor 16 or was that with respect to Wendy Gauthier? 17 A. I do not know that. 18 Q. Is there some policy that was being 19 followed at SunBridge that Ann Kendall felt she 20 needed a note from Wendy Gauthier to clear her 21 from lifting patients? 22 A. I do not know that either. 23 Q. Do you know whether Wendy Gauthier 24 asked for any accommodations from Ann Kendall or</p>
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<p>1 was ever injured at work? 2 A. No. 3 Q. Do you know any of the reasons why 4 Wendy Gauthier took time off from work? 5 A. No. 6 Q. At SunBridge? 7 A. No. 8 Q. You don't know either way? 9 A. No, I know she had an excessive 10 call out history. 11 Q. Do you know how many times she was 12 out? 13 A. No. 14 Q. Do you know, I think you referenced 15 her trying to get back to work with notes of 16 some kind? 17 A. Mm-hmm. 18 Q. Yes? 19 A. Yes. 20 Q. What do you know about that? 21 A. She was asked to provide Ann 22 Kendall with a note from her primary care 23 physician stating that she could work due to the 24 nature of her job responsibilities.</p>	<p>1 anyone at Sandalwood, SunBridge relating to 2 complications to her pregnancy, concerning her 3 pregnancy? 4 A. No. 5 Q. Would you know that, should Ann 6 Kendall have shared that with you? 7 A. Yes. 8 * Q. If an employee, hypothetically, has 9 pregnancy complications that amount to a 10 physical impairment of some sort and they are 11 asking for an accommodation, would you have been 12 involved in that process during the time that 13 Wendy Gauthier was employed at Sandalwood? 14 MR. GRIGGS: Objection to the form. 15 Do you understand the question. 16 THE WITNESS: No. 17 MR. SHEA: Can you read that back? 18 19 * (Question read) 20 21 THE WITNESS: I don't know what 22 you are looking for, what kind of answer. 23 MR. SHEA: Maybe I can shorten it. 24 Q. (By Mr. Shea) If an employee is</p>

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1 pregnant and had complications relating to that
 2 pregnancy that cause the employee a physical
 3 impairment, like needing time off from work,
 4 excessive morning sickness, maybe they need to
 5 go to the bathroom a lot, maybe they need that
 6 as an accommodation, maybe they need time off
 7 from work for it. I'll give you morning
 8 sickness as an example. If the employee is
 9 asking for an accommodation for that, such as
 10 time off from work or time to go to the bathroom
 11 now and then that they normally wouldn't need,
 12 would you be involved in that process or would
 13 that be Ann Kendall that would be involved?
 14 A. Ann Kendall would be involved.
 15 Q. She wouldn't involve you in that
 16 process?
 17 A. No.
 18 Q. Do you know whether Wendy Gauthier
 19 ever asked for light duty at SunBridge or no?
 20 A. No.
 21 Q. If she asked for light duty or say
 22 accommodation for her pregnancy, would that have
 23 gone through just Ann Kendall or would you be
 24 involved?

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1 A. It would have gone through Ann
 2 Kendall.
 3 Q. You wouldn't be involved in that
 4 process?
 5 A. No.
 6 Q. Meaning correct?
 7 A. Correct.
 8 Q. Do you know what happened, Wendy
 9 Gauthier was asked to provide a note from her
 10 doctor by Ann Kendall?
 11 A. No, I assume she provided it.
 12 Q. So was Wendy Gauthier okay to
 13 return to work without restrictions?
 14 MR. GRIGGS: Form.
 15 THE WITNESS: That, I do not know
 16 about that.
 17 Q. (By Mr. Shea) Did Wendy Gauthier
 18 ever have restrictions, physical restrictions at
 19 SunBridge? When I say SunBridge, understanding
 20 I mean SunBridge, Sandalwood?
 21 A. Right.
 22 Q. Did she ever have any restrictions,
 23 medical restrictions at Sandalwood or SunBridge?
 24 A. No.

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1 Q. Would you necessarily know that or
 2 just Ann Kendall would know?
 3 A. Ann Kendall would.
 4 Q. You wouldn't know that?
 5 A. No.
 6 Q. Would that make a difference in the
 7 decision to terminate her employment?
 8 MR. GRIGGS: I'll object to the
 9 form. If you understand the question.
 10 THE WITNESS: You're saying that
 11 if she had light duty, if we gave her light
 12 duty, would that cause us to terminate her,
 13 is that your question? By giving her light
 14 duty, would that be the reason?
 15 Q. (By Mr. Shea) Let me restate the
 16 question, it's a little vague.
 17 If she had complications related to
 18 her pregnancy where she needed time off from
 19 work, would that have made a difference in yours
 20 and Ann Kendall's decision to terminate Wendy
 21 Gauthier's employment?
 22 MR. GRIGGS: Form.
 23 Q. (By Mr. Shea) Would that be an
 24 important fact to know?

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1 A. No.
 2 Q. Why not?
 3 A. We'd review her situation in light
 4 of her absenteeism.
 5 Q. As part of reviewing her
 6 situation, wouldn't you want to know if she had
 7 complications related to her pregnancy that
 8 caused her the need to take time off?
 9 MR. GRIGGS: Objection.
 10 THE WITNESS: No, not necessarily.
 11 Q. (By Mr. Shea) How would you review
 12 her complications in her pregnancy and need to
 13 take time off for them?
 14 A. We would look at the overall
 15 picture, the period of time when she was not
 16 pregnant and had excessive absenteeism.
 17 Q. I'm sorry, can you explain that?
 18 A. There was a history of absenteeism
 19 with Wendy prior to being pregnant. Pregnancy
 20 gave her an opportunity or a tangible reason to
 21 call in and not report to work.
 22 Q. Prior to her being pregnant, was
 23 she ever warned for absenteeism?
 24 A. I wasn't there, I do not know that.

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<p>1 Q. Were you there prior to her being</p> <p>2 pregnant?</p> <p>3 A. I do not know when she became</p> <p>4 pregnant.</p> <p>5 Q. You don't know if there was any</p> <p>6 absenteeism issues with Wendy Gauthier prior to</p> <p>7 her being pregnant?</p> <p>8 A. Yes, I know that there was</p> <p>9 absenteeism issues whether she was pregnant or</p> <p>10 not pregnant, it was a lot of absenteeism for</p> <p>11 the nature of the work she did.</p> <p>12 Q. Do you know whether there was</p> <p>13 absentee issue with respect to Wendy Gauthier</p> <p>14 prior to her being pregnant, do you know that?</p> <p>15 A. No.</p> <p>16 Q. Did you know that when you decided</p> <p>17 to terminate her with Ann Kendall?</p> <p>18 A. The pregnancy complication issues?</p> <p>19 Q. No. Did you know whether she had</p> <p>20 any absenteeism issues prior to her being</p> <p>21 pregnant at the time you and Ann Kendall</p> <p>22 terminated Wendy Gauthier?</p> <p>23 A. Yes, she was terminated for</p> <p>24 absenteeism.</p>	<p>1 the time of the decision to terminate her</p> <p>2 employment?</p> <p>3 A. No.</p> <p>4 Q. You did not know?</p> <p>5 A. No.</p> <p>6 Q. Can you tell me how often she was</p> <p>7 absent prior to her termination?</p> <p>8 A. I don't recall the number, the</p> <p>9 exact number.</p> <p>10 Q. Did you review any document --</p> <p>11 strike that.</p> <p>12 How many meetings did you have with</p> <p>13 Ann Kendall about Wendy Gauthier?</p> <p>14 A. I do not recall the number of</p> <p>15 meetings. There were more than one.</p> <p>16 Q. Was there more than two?</p> <p>17 A. Yes.</p> <p>18 Q. Was there for more than three?</p> <p>19 A. Most likely, yes.</p> <p>20 Q. I don't want you to guess.</p> <p>21 A. There would be more than three. We</p> <p>22 tried to be as fair as possible.</p> <p>23 Q. How many meetings did you have with</p> <p>24 Ann Kendall?</p>
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<p>1 Q. My question is, did you know at</p> <p>2 that time whether there were any absenteeism</p> <p>3 issues with Wendy Gauthier prior to her being</p> <p>4 pregnant?</p> <p>5 A. Yes.</p> <p>6 Q. You did know that?</p> <p>7 A. What was your question?</p> <p>8 Q. I'm focusing on whether at the time</p> <p>9 your decision to terminate Wendy Gauthier, you</p> <p>10 or Ann Kendall knew that whether Wendy Gauthier</p> <p>11 had absentee issues prior to becoming pregnant?</p> <p>12 MR. GRIGGS: Answer what you know.</p> <p>13 THE WITNESS: I'm assuming that</p> <p>14 there were several documented absentees for</p> <p>15 Wendy.</p> <p>16 Q. (By Mr. Shea) Do you know whether</p> <p>17 there were prior to her pregnancy?</p> <p>18 A. No, I don't know when she became</p> <p>19 pregnant.</p> <p>20 Q. Did you know at the time of her</p> <p>21 termination --</p> <p>22 A. If she had excessive absentees?</p> <p>23 Q. No. Do you know whether she had</p> <p>24 absenteeism issues prior to becoming pregnant at</p>	<p>1 A. A minimum of four meetings.</p> <p>2 Q. Do you recall those meetings or no?</p> <p>3 A. No.</p> <p>4 Q. Do you recall who was present in</p> <p>5 those meetings?</p> <p>6 A. Ann Kendall.</p> <p>7 Q. Just Ann Kendall and yourself?</p> <p>8 A. Yes.</p> <p>9 Q. Do you remember where they were</p> <p>10 held?</p> <p>11 A. In the facility.</p> <p>12 Q. Where in the facility?</p> <p>13 A. In an office.</p> <p>14 Q. Which office?</p> <p>15 A. One of the offices, Ann's or mine.</p> <p>16 Q. You don't know?</p> <p>17 A. Ann's office or my office would be</p> <p>18 where meetings were held because of the limited</p> <p>19 space in the building and the privacy that was</p> <p>20 afforded to us. So it would be in my office or</p> <p>21 Ann's office.</p> <p>22 Q. Do you remember meetings held</p> <p>23 specifically?</p> <p>24 A. Yes.</p>

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<p>1 Q. In either your office or any other 2 location at the facility? 3 A. Yes. 4 Q. But you don't remember the content 5 of any of the meetings, is that fair to say? 6 A. Wendy's absenteeism was the 7 content. 8 Q. You don't remember what was said in 9 the meetings? 10 A. How I would handle it. 11 Q. Do you remember what was said or 12 no? 13 A. No. 14 Q. Whether there were any documents 15 reviewed? 16 A. No. 17 Q. Do you remember -- strike that. 18 Was it just you and Ann Kendall 19 that made the decision to terminate Wendy 20 Gauthier? 21 A. Yes. 22 Q. You believe that there's a written 23 no call/no show policy that says that one 24 incident of a no call/no show results in a</p>	<p>1 note? 2 A. Yes. 3 Q. Was she cleared to come back to 4 work? 5 A. Yes. 6 Q. She was allowed to come back to 7 work with a medical note? 8 A. Yes. 9 Q. That was prior to her termination 10 of employment, correct? 11 A. Yes. 12 Q. Do you know how many times she had 13 to bring in a medical note? 14 A. No. 15 Q. Do you remember a Lisa Franks? 16 A. Yes, I remember her being an 17 employee. 18 Q. Do you remember anything about the 19 circumstances of the no call/no show, the two no 20 call/no shows that you referred to earlier with 21 respect to Wendy Gauthier? 22 A. No. 23 Q. Was there an attendance policy in 24 place at the time of Wendy Gauthier's employment</p>
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<p>1 termination, is that what you said? 2 A. There is a policy that states that. 3 Q. Was there an unwritten policy to 4 sometimes provide leniency in that regard? 5 A. Yes, it was the discretion of the 6 department head, depending on the circumstances 7 of the employee. 8 Q. And Ann Kendall was Wendy 9 Gauthier's department head? 10 A. Yes. 11 Q. What factors into that discretion, 12 in what circumstances could you have more than 13 one no call/no show? 14 A. As performance, again, extenuating 15 circumstances with family members. 16 Q. What about complications of 17 pregnancy, that could factor into that? 18 A. Yes. 19 Q. And allow for more absences, more 20 than one no call/no show? 21 A. Yes. 22 Q. I'm sorry if you answered this, but 23 did you tell me everything you know about Wendy 24 Gauthier coming back to work with a medical</p>	<p>1 at SunBridge? 2 A. An attendance policy? 3 Q. Yes. 4 A. Yes. 5 Q. What was the attendance policy? 6 A. That employees were required to 7 report to work on their designated shift. I 8 believe with the approval with the department 9 head, they could get coverage and swap shifts. 10 Q. That didn't have to be in writing, 11 right? 12 A. It was preferred in writing, but 13 again, it could have been a verbal agreement 14 that one would make with an employee with their 15 supervisors. 16 MR. GRIGGS: I would object to the 17 form. 18 Q. (By Mr. Shea) As part of the two 19 no call/no shows that you referenced with 20 respect to Wendy Gauthier, do you know whether 21 she had coverage? 22 A. No. 23 Q. You don't know either way? 24 A. No.</p>

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<p>1 Q. Meaning, correct you don't know?</p> <p>2 A. Correct.</p> <p>3 Q. I have some employee files of</p> <p>4 other employees at SunBridge that I'm going to</p> <p>5 have you take a look at and ask you a few</p> <p>6 questions about and just ask you what you know</p> <p>7 about some of the action that was taken in these</p> <p>8 files.</p> <p>9 I'm going to refer to them as</p> <p>10 Employee No. 2 or No. 1 or whatever. We've</p> <p>11 labeled these files, we've redacted the names to</p> <p>12 some degree. And so each of these subfiles are</p> <p>13 listed by employee number, okay. And I want you</p> <p>14 to take a look at them, Employee No. 2 --</p> <p>15 MR. GRIGGS: Can we go off the</p> <p>16 record for a second?</p> <p>17 MR. SHEA: Sure.</p> <p>18</p> <p>19 (Off record discussion)</p> <p>20</p> <p>21 MR. SHEA: Back on the record.</p> <p>22 Q. (By Mr. Shea) Do you know whether</p> <p>23 Wendy Gauthier was a good employee at SunBridge?</p> <p>24 A. No.</p>	<p>1 A. Various tasks as far as filing,</p> <p>2 more office type of work.</p> <p>3 Q. Answering phones?</p> <p>4 A. Answering phones. Patient escorts.</p> <p>5 Q. How many shifts were there?</p> <p>6 A. Three shifts.</p> <p>7 Q. Did that necessarily have to happen</p> <p>8 on the first shift, the light duty or could it</p> <p>9 happen on the other shift?</p> <p>10 A. It was mostly 7:00 to 3:00, the</p> <p>11 first shift.</p> <p>12 Q. Wouldn't there be light duty on the</p> <p>13 second and third shift as well?</p> <p>14 A. No, because the reduction of work</p> <p>15 force numbers and hours available did not allow</p> <p>16 us to have light duty.</p> <p>17 Q. Was Wendy Gauthier a CNA?</p> <p>18 A. Yes.</p> <p>19 Q. Certified nursing assistant?</p> <p>20 A. Assistant.</p> <p>21 Q. Do you know whether she was ever</p> <p>22 offered light duty of any kind?</p> <p>23 A. No.</p> <p>24 Q. Do you know whether she ever</p>
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<p>1 Q. You don't know?</p> <p>2 A. I would assume, yes, good employee.</p> <p>3 Q. You don't know whether she was</p> <p>4 given any kind of opportunity to perform light</p> <p>5 duty?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether light duty was</p> <p>8 available for someone in her position?</p> <p>9 A. No.</p> <p>10 Q. You don't know?</p> <p>11 A. I do know. Not for a CNA due to</p> <p>12 the nature of the work lifting.</p> <p>13 Q. Do you know whether they put any</p> <p>14 CNAs on light duty?</p> <p>15 A. No.</p> <p>16 Q. You don't know? You know they</p> <p>17 didn't or you don't know either way?</p> <p>18 A. Yes, we would put CNAs on light</p> <p>19 duty if we could accommodate them.</p> <p>20 Q. Where would they go on light duty?</p> <p>21 A. On the day shift if there was a</p> <p>22 position available.</p> <p>23 Q. What would they do on the day shift</p> <p>24 that needed light duty?</p>	<p>1 requested light duty of any kind?</p> <p>2 A. No.</p> <p>3 Q. If she did, would you know that</p> <p>4 through Ann Kendall?</p> <p>5 MR. GRIGGS: Form.</p> <p>6 THE WITNESS: No.</p> <p>7 Q. (By Mr. Shea) Because you are not</p> <p>8 involved in those requests?</p> <p>9 A. No, not with light duty.</p> <p>10 Q. Meaning correct you are not?</p> <p>11 A. Correct.</p> <p>12 Q. Would the need for light duty</p> <p>13 factor into a decision to terminate an employee,</p> <p>14 meaning could there be extenuating circumstances</p> <p>15 where you wouldn't terminate an employee after</p> <p>16 a no call/no show because they needed light duty</p> <p>17 for medical reasons?</p> <p>18 MR. GRIGGS: Form.</p> <p>19 THE WITNESS: No.</p> <p>20 Q. (By Mr. Shea) No, there would not?</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. No call/no show was violation of</p> <p>24 the policy.</p>

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17 (Pages 62 to 65)

Page 62	Page 64
<p>1 Q. Have you told me everything you 2 know about the attendance policy that applied to 3 Wendy Gauthier? 4 A. Yes. 5 Q. What's your understanding of that 6 policy in as much detail as you can give me? 7 A. The attendance policy for 8 SunBridge? 9 Q. That applied to Wendy Gauthier, 10 yes. 11 A. It was the basic attendance policy 12 for all. Employees were assigned specific 13 shifts that they were required to report to, 14 they were required to call in, I believe it was 15 two hours prior to the shift if there was a call 16 out. They could get a replacement with the 17 approval of the supervisor and/or the department 18 head. And they would follow break times, if 19 they leave the facility, they would punch out. 20 Q. Was there anything in the policy 21 that you recall that relates to discipline for 22 either tardiness or absenteeism? 23 A. No. 24 Q. You don't recall anything in the</p>	<p>1 2 Q. (By Mr. Shea) So let me ask you 3 what Employee No. 2 was verbally warned for or 4 warned for? 5 A. Is there a written warning in here? 6 From that record of attendance, it looks like 7 tardiness. 8 Q. You are familiar with the basic set 9 up of those personnel files, I assume? 10 A. No. 11 Q. You are not? 12 A. No. 13 Q. Did you ever review personnel 14 files? 15 A. No. 16 Q. Did anyone review Ms. Gauthier's 17 personnel file prior to her termination? 18 A. No. 19 Q. You don't know either way or they 20 did not? 21 A. Correct. 22 Q. Which one? 23 A. That I do not know if they reviewed 24 her file prior to termination.</p>
Page 63	Page 65
<p>1 attendance policy that related to a warning 2 after a certain number of absences or 3 tardiness issues? 4 A. I do not believe that SunBridge 5 listed the specific number. It was a discretion 6 of the department head. 7 Q. As to what discipline would take 8 place after any given number of absences or 9 tardiness, correct? 10 A. Yes. 11 Q. Can you look at Employee No. 2? 12 MR. SHEA: We don't need to mark 13 these, maybe we should. 14 MR. GRIGGS: I don't know how we 15 are going to know after this who was 16 Employee No. 1 or without the files being 17 marked. 18 MR. SHEA: I'll give you the 19 question so you are not just randomly going 20 through the file. Before we do that, can 21 we just mark that? 22 23 (Exhibit 2, Employee #2 File, 24 marked)</p>	<p>1 Q. The only two people involved in her 2 termination were you and Ann Kendall, right? 3 A. Yes. 4 Q. Do you know whether Ann Kendall 5 looked at Wendy Gauthier's personnel file prior 6 to her termination? 7 A. No. 8 Q. Do you know where Wendy Gauthier's 9 personnel file was located at the time of her 10 termination, the physical file? 11 A. I believe it would be the files 12 were split, there were medical records and 13 medical information that needed to be locked. 14 And there was the financial and corporate 15 paperwork. Generally, the medical was left with 16 immunization records, past physical records and 17 the SDC office. 18 Q. Who was the SDC? 19 A. Staff development coordinator. 20 Q. Who was that at the time of Wendy 21 Gauthier's tenure there? 22 A. I do not, I am not sure. I can't 23 recall a name. 24 Q. If it comes to mind, can you tell</p>

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18 (Pages 66 to 69)

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1 me?

2 A. Mm-hmm.

3 Q. Was it the same person who was the
4 staff coordinator at the time of her
5 termination? In other words, was it the same
6 person the whole time she was there, Wendy
7 Gauthier, was employed at SunBridge?8 A. The staff development coordinator
9 was hired at my time, during my time as
10 administrator. I do not recall the exact time
11 frame that she was hired and whether Ms.
12 Gauthier was there.13 Q. Do you see anything referencing a
14 warning in that file, Employee No. 2 that we've
15 marked as Exhibit 2? Actually the tabs on there
16 may help you.17 A. I see this record of counseling
18 performance and improvement plan.19 Q. Do you see any warnings in the
20 file?

21 A. Yes, performance improvement plan.

22 Q. That is a warning?

23 A. You've been late 37 times in two
24 and a half months, your attitude toward your job

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1 may lead up to corrective action up to and
2 including termination of employment. I would
3 say that's a warning.4 Q. Was there a warning form that was
5 used at SunBridge, do you know, for a written
6 warning?

7 A. It would be this one here.

8 Q. What's the date of that performance
9 improvement plan?

10 A. 7/9/03.

11 Q. Anything that was a written warning
12 was called performance improvement plan?13 A. That would be one of the
14 instruments. Record of counseling would be
15 another. I can't say not having written them or
16 used them, can I say it was Sandalwood or
17 SunBridge written warning.18 Q. You were involved in approving
19 written warnings, right?20 A. I was involved in being informed of
21 the written warnings being issued. I didn't see
22 the actual documents.

23 Q. You didn't sign off on anything?

24 A. No, not that I recall.

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1 Q. Can you go to the second page you
2 just referenced to and tell me what the date is
3 on that?

4 A. 3/1/04.

5 Q. What's that document titled?

6 A. Record of counseling.

7 Q. So you think that's a warning or do
8 you know?9 A. I would say yes, failure to
10 correct.11 MR. SHEA: Your counsel was
12 pointing to the employee document, I would
13 just ask that you not do that.14 MR. GRIGGS: The document speaks
15 for itself.

16 THE WITNESS: It's right there.

17 MR. SHEA: We'll just let him look
18 at the document by himself.19 Q. (By Mr. Shea) How many warnings
20 did Employee No. 2 get, do you know and for
21 what?

22 A. It looks like two.

23 Q. Two warnings?

24 A. Mm-hmm.

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1 Q. Yes?

2 A. Yes.

3 Q. Are they written warnings?

4 A. Two written warnings.

5 Q. Does Employee No. 2 get other
6 warnings?7 A. Are you asking me if there are
8 other written warnings in this file?9 Q. Any other warnings, verbal or
10 written?11 A. Verbal I would not know. It was
12 before my time there. I don't see any other.13 Q. Again, you were familiar with the
14 attendance policy at SunBridge the time Wendy
15 Gauthier was employed there, right?

16 A. Yes.

17 Q. You had a pretty good understanding
18 of it, correct?

19 A. Yes.

20 Q. You do sitting here today, correct?

21 A. Somewhat, yes.

22 Q. When you say somewhat, are you
23 fuzzy on the attendance policy, are you vague on
24 it?**CATUOGNO COURT REPORTING SERVICES****Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI**

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19 (Pages 70 to 73)

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<p>1 A. Yes.</p> <p>2 Q. You are?</p> <p>3 A. I'm familiar with it, but I've been</p> <p>4 out of the facility for almost two years, so to</p> <p>5 recall the specific details of that policy.</p> <p>6 Q. But you are sure that there was no</p> <p>7 number of times you could be tardy within a</p> <p>8 certain time frame before you get a warning?</p> <p>9 A. No.</p> <p>10 Q. Right, that wasn't part of the</p> <p>11 policy, right?</p> <p>12 A. Correct.</p> <p>13 Q. I'm not sure you answered this</p> <p>14 question, is there any other warnings in the</p> <p>15 file?</p> <p>16 A. No.</p> <p>17 Q. Is there anything in Exhibit 2 with</p> <p>18 respect to Employee No. 2 that indicates that</p> <p>19 Employee No. 2 was verbally warned?</p> <p>20 A. No, I see no verbal warnings.</p> <p>21 Q. Was Employee No. 2 changed to full</p> <p>22 time on June 25th, '03, is there anything in the</p> <p>23 file that indicates that?</p> <p>24 A. Would that be marked?</p>	<p>1 names if there were employee files that had</p> <p>2 some information in them that we wanted to</p> <p>3 ask questions about. If I mentioned the</p> <p>4 names to him, which I know, to see if he</p> <p>5 knows the particular employee or the</p> <p>6 performance or the reason the employee was</p> <p>7 out on disability, would that be a problem?</p> <p>8 MR. GRIGGS: Well, as far as we are</p> <p>9 going on the record, I'd rather not have</p> <p>10 their names in the record.</p> <p>11 MR. SHEA: I'm trying to jog his</p> <p>12 memory on whether outside of looking at the</p> <p>13 personnel file whether he has an</p> <p>14 independent recollection of either the</p> <p>15 performance or the reason the employee was</p> <p>16 out on disability because the file itself</p> <p>17 is not helping him.</p> <p>18 MR. GRIGGS: I have an idea.</p> <p>19 Perhaps we can just go off the record for a</p> <p>20 second?</p> <p>21 MR. SHEA: Sure.</p> <p>22</p> <p>23 (Off record discussion)</p> <p>24</p>
Page 71	Page 73
<p>1 Q. It may be, you may want to go to</p> <p>2 the labeled document. I'm looking for</p> <p>3 information that would indicate to you that the</p> <p>4 employee was made full time and/or given a raise</p> <p>5 after being tardy 37 times?</p> <p>6 A. I don't see that. I don't see</p> <p>7 that. What you are looking for?</p> <p>8 Q. In your review of Exhibit 2, is</p> <p>9 there anything in there that you saw that</p> <p>10 indicated that Employee No. 2 went out on</p> <p>11 disability for any reason?</p> <p>12 A. Just this form that I see, employee</p> <p>13 is on disability.</p> <p>14 Q. Can you just tell me which form you</p> <p>15 are looking at?</p> <p>16 A. It looks like a performance form.</p> <p>17 Employee is out on disability.</p> <p>18 Q. Is there anything in the file that</p> <p>19 indicates why the employee was out on</p> <p>20 disability?</p> <p>21 MR. SHEA: While he's looking at</p> <p>22 that and I'm going to try to shorten this</p> <p>23 up a little bit, but I know that I talked</p> <p>24 to Mike Williams about possibly using their</p>	<p>1 MR. SHEA: Back on the record.</p> <p>2 Q. (By Mr. Shea) When you were</p> <p>3 working at Sandalwood, did you just work at that</p> <p>4 facility?</p> <p>5 A. Yes.</p> <p>6 Q. Your basic hours were what?</p> <p>7 A. 8:00 to 5:00.</p> <p>8 Q. You had an office there?</p> <p>9 A. Yes.</p> <p>10 Q. And Ann Kendall has an office</p> <p>11 there?</p> <p>12 A. Yes.</p> <p>13 Q. Was Ann Kendall's office an</p> <p>14 enclosed office with a door on it?</p> <p>15 A. Yes.</p> <p>16 Q. And your's was too?</p> <p>17 A. Yes.</p> <p>18 Q. Were they near each other?</p> <p>19 A. Yes.</p> <p>20 Q. Were they right next to each other?</p> <p>21 A. A foyer separated us.</p> <p>22 Q. Did Employee No. 2 have a no</p> <p>23 call/no show?</p> <p>24 A. I do not know.</p>

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20 (Pages 74 to 77)

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<p>1 Q. You can't tell from looking at the 2 file?</p> <p>3 The only thing I would ask is try 4 to keep the papers in the same order, record of 5 attendance. I didn't mean to lose your space.</p> <p>6 My question that was pending was 7 did Employee No. 2 have a no call/no show 8 according to the file?</p> <p>9 A. There's an absent report no 10 call/no show.</p> <p>11 Q. What date is that?</p> <p>12 A. 6/14/04.</p> <p>13 Q. Was Employee No. 2 terminated at 14 any point from SunBridge involuntary?</p> <p>15 A. I don't recall if she was 16 terminated.</p> <p>17 Q. Was there more than one no call/no 18 show with respect to this employee or is that 19 it?</p> <p>20 A. I see two.</p> <p>21 Q. When was the second no call/no 22 show?</p> <p>23 A. 6/22, it looks like eight days 24 later and it states no call/no show, states she</p>	<p>1 for her scheduled shift, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Why was Employee No. 2 allowed two 4 no call/no shows after she had been cleared to 5 return to work with no restrictions, do you 6 know?</p> <p>7 A. No.</p> <p>8 Q. You don't know?</p> <p>9 A. I do not know.</p> <p>10 Q. Does it seem to you from the file 11 that the two no call/no shows in Employee No. 2 12 should have resulted in termination?</p> <p>13 A. Yes.</p> <p>14 Q. You don't know why Employee No. 2 15 was not terminated immediately after two no 16 call/no shows?</p> <p>17 MR. GRIGGS: Objection. The 18 document spoke for itself.</p> <p>19 Q. (By Mr. Shea) You don't know why?</p> <p>20 A. No.</p> <p>21 Q. When was Employee No. 2 terminated?</p> <p>22 A. Is that in the file?</p> <p>23 Q. I think it is. 24 I believe you'll find a</p>
Page 75	Page 77
<p>1 resigned.</p> <p>2 Q. Because that's considered a 3 voluntary resignation?</p> <p>4 A. Yes.</p> <p>5 Q. Why was Wendy Gauthier terminated 6 for the second no call/no show?</p> <p>7 A. Because of her attendance.</p> <p>8 Q. Was she terminated for a no call/no 9 show?</p> <p>10 A. I believe, yes.</p> <p>11 Q. Do you remember the date she was 12 terminated?</p> <p>13 A. No.</p> <p>14 Q. Do you know who, if anyone, had 15 been informed that Employee No. 2 would be 16 absent from her shift?</p> <p>17 A. Excuse me?</p> <p>18 Q. Do you know who, if anyone, had 19 been informed that Employee No. 2 would be 20 absent from her shift when she had the no 21 call/no show?</p> <p>22 A. No.</p> <p>23 Q. You did not alert Employee No. 2's 24 supervisor that this employee would not be in</p>	<p>1 termination date of October 13, '04.</p> <p>2 A. If she were per diem status, which 3 means used as needed, she would be on the books 4 until significant time had lapsed and then she 5 would be removed, so that's why it would show 6 the window being.</p> <p>7 Q. Looking at Employee No. 2's file, 8 do you know on what date she was terminated?</p> <p>9 A. I don't find what date she was 10 terminated.</p> <p>11 Q. So if I told you she was terminated 12 on October 13, '04, you wouldn't know what the 13 reason was why she was terminated on 10/13/04?</p> <p>14 A. For Employee 2, no.</p> <p>15 Q. And not sooner after the second no 16 call/no show, correct?</p> <p>17 A. Correct.</p> <p>18 MR. SHEA: Can you mark that, 19 please?</p> <p>20</p> <p>21 (Exhibit 3, Employee #5 File, 22 marked)</p> <p>23</p> <p>24 Q. (By Mr. Shea) Are you still</p>

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21 (Pages 78 to 81)

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<p>1 looking at Exhibit 2?</p> <p>2 A. This is the employee, it looks like</p> <p>3 it's a letter of resignation and then it was</p> <p>4 terminated off the books. She was terminated</p> <p>5 off of payroll at your October date. That's</p> <p>6 what it appears.</p> <p>7 Q. Do you know the reason for the</p> <p>8 termination or no?</p> <p>9 A. No. If we are talking about the</p> <p>10 same person, what I seem to see is a letter of</p> <p>11 resignation that she cannot perform her duties,</p> <p>12 however, she remained on our payroll and</p> <p>13 appearing as an active employee.</p> <p>14 Q. Do you know whether, in fact --</p> <p>15 A. Was removed from the per diem</p> <p>16 status in October.</p> <p>17 Q. Do you know whether Employee No. 2</p> <p>18 was a per diem employee or not?</p> <p>19 A. I think, well, reading this,</p> <p>20 therefore keep in mind status from 32 to that of</p> <p>21 per diem as effective 6/21/04.</p> <p>22 Q. That's the handwritten note from</p> <p>23 the employee to you?</p> <p>24 A. Yes.</p>	<p>1 A. No, because of her letter of</p> <p>2 resignation dated June '04.</p> <p>3 Q. I'm asking you if you know whether</p> <p>4 she worked, notwithstanding a note you saw in</p> <p>5 the file?</p> <p>6 A. No, I do not know.</p> <p>7 Q. Can you look at Employee No. 5</p> <p>8 which is marked as Exhibit 3? And focusing</p> <p>9 right in on that file, I'll suggest to you on</p> <p>10 April 19, 2004 there was a no call/no show with</p> <p>11 this employee.</p> <p>12 MR. SHEA: Do you want to go off</p> <p>13 the record for a second to see if he knows</p> <p>14 this person?</p> <p>15 MR. GRIGGS: Sure.</p> <p>16</p> <p>17 (Off record discussion)</p> <p>18</p> <p>19 MR. SHEA: Back on the record.</p> <p>20 Q. (By Mr. Shea) Focusing on April</p> <p>21 19, '04, can you tell me whether Employee No. 5</p> <p>22 had a no call/no show?</p> <p>23 I'm just focusing on one thing.</p> <p>24 When the file indicates that the employee had a</p>
Page 79	Page 81
<p>1 Q. Do you know whether the employee</p> <p>2 was per diem or no?</p> <p>3 A. It would be full time, reading this</p> <p>4 she would be full time.</p> <p>5 Q. Is there any reason she'd still be</p> <p>6 on the books in October if she wasn't working?</p> <p>7 A. Yes.</p> <p>8 Q. What is that?</p> <p>9 A. That the necessary paperwork to</p> <p>10 remove her from the payroll was never submitted.</p> <p>11 Q. How long does that usually take?</p> <p>12 A. Generally, it ideally should be</p> <p>13 done probably by the end of the work week.</p> <p>14 Q. Do you know whether Employee No. 2</p> <p>15 ever worked between 6/22/04 and 10/13/04?</p> <p>16 A. I do not know that.</p> <p>17 Q. For all you know, she could have,</p> <p>18 correct?</p> <p>19 MR. GRIGGS: Form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 Q. (By Mr. Shea) Either way, right?</p> <p>22 A. She did not work.</p> <p>23 Q. Do you know whether she worked at</p> <p>24 SunBridge between 6/22/04 and 10/13/04 or no?</p>	<p>1 no call/no show on 4/19/04, does that look</p> <p>2 accurate?</p> <p>3 A. I see NCe slash NC 4/19.</p> <p>4 Q. NC l slash?</p> <p>5 A. NC,d that must be no call/no show.</p> <p>6 Q. Do you know the reason for that no</p> <p>7 call/no show?</p> <p>8 A. No.</p> <p>9 Q. Do you recollect that no call/no</p> <p>10 show?</p> <p>11 A. This was before I was employed</p> <p>12 there.</p> <p>13 Q. Were the no call/no shows with</p> <p>14 respect to Employee No. 2 that we talked</p> <p>15 about --</p> <p>16 A. I take that back, let me see. I</p> <p>17 don't recall the employee though.</p> <p>18 I said this was before I was</p> <p>19 employed, but I was employed there.</p> <p>20 Q. Okay. Do you recall --</p> <p>21 A. I don't recall that employee or</p> <p>22 that no call/no show, no.</p> <p>23 Q. What about with respect to Employee</p> <p>24 No. 2, do you recall those no call/no shows?</p>

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22 (Pages 82 to 85)

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<p>1 A. No.</p> <p>2 Q. Looking at Employee No. 5, can you</p> <p>3 tell me why that employee was not terminated as</p> <p>4 a result of a no call/no show on 4/19/04?</p> <p>5 A. No.</p> <p>6 Q. You can't tell me why?</p> <p>7 A. Why the employee was not</p> <p>8 terminated?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. Do you know whether Employee No. 5</p> <p>12 was put on a schedule to work after not showing</p> <p>13 up for your scheduled shift?</p> <p>14 A. I don't know that.</p> <p>15 Q. You can't tell that by looking at</p> <p>16 the file you have in front of you marked as</p> <p>17 Exhibit 3, correct?</p> <p>18 A. Your question was that she was on</p> <p>19 the schedule after a no call/no show?</p> <p>20 Q. Yes. And along with that, why it</p> <p>21 was not documented in her file that she didn't</p> <p>22 show up for her shift between 4/19/04 and</p> <p>23 5/10/04.</p> <p>24 MR. GRIGGS: Objection to the form</p>	<p>1 accurate?</p> <p>2 A. Yes.</p> <p>3 Q. How many of those instances was</p> <p>4 there a no call/no show?</p> <p>5 A. I think there was two.</p> <p>6 Q. What, if any, written warnings did</p> <p>7 Employee No. 6 receive?</p> <p>8 A. I see one.</p> <p>9 Q. What date is that?</p> <p>10 A. 9/6.</p> <p>11 Q. What is that document titled?</p> <p>12 A. Record of counseling.</p> <p>13 Q. Is the record of counseling a</p> <p>14 written warning?</p> <p>15 A. Yes.</p> <p>16 Q. Then was there more than one</p> <p>17 written warning? The employee was then given</p> <p>18 another warning; is that correct?</p> <p>19 A. I only see the one.</p> <p>20 Q. Do you see anything in the file</p> <p>21 that indicates previous written warnings had not</p> <p>22 been delivered and then there was a final</p> <p>23 written warning?</p> <p>24 You only see one written warning?</p>
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<p>1 of the question. I'm not sure it's clear.</p> <p>2 THE WITNESS: I don't see that.</p> <p>3 MR. SHEA: Let's mark that?</p> <p>4</p> <p>5 (Exhibit 4, Employee #6 File,</p> <p>6 marked)</p> <p>7</p> <p>8 Q. (By Mr. Shea) I'm going to show</p> <p>9 you what's been marked as Exhibit 4, Employee</p> <p>10 No. 6 file, can you take a look at that. And my</p> <p>11 question is how many times did Employee No. 6</p> <p>12 call out of work between her date of hire on</p> <p>13 July 15, '05 and September 4, '05, if you can</p> <p>14 tell that from the record?</p> <p>15 MR. SHEA: Off the record.</p> <p>16</p> <p>17 (Off record discussion)</p> <p>18</p> <p>19 MR. SHEA: Back on the record.</p> <p>20 Q. (By Mr. Shea) My question was why</p> <p>21 it was not documented -- I'm sorry, how many</p> <p>22 times Employee No. 6 called out of work between</p> <p>23 her date of hire of July 15, '05 and 9/4/05? My</p> <p>24 count is five, by the way. Does that look</p>	<p>1 A. Mm-hmm.</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know why this Employee No. 6</p> <p>5 was terminated?</p> <p>6 A. No.</p> <p>7 Q. Do you know why Employee No. 6 was</p> <p>8 not terminated immediately after the second no</p> <p>9 call/no show?</p> <p>10 A. This employee?</p> <p>11 Q. Please, No. 6, yes.</p> <p>12 A. No.</p> <p>13 Q. You don't know why?</p> <p>14 A. No.</p> <p>15 Q. Should that employee should have</p> <p>16 been terminated after the first no call/no show?</p> <p>17 MR. GRIGGS: Form.</p> <p>18 THE WITNESS: I wasn't there.</p> <p>19 Q. (By Mr. Shea) I'm speaking in</p> <p>20 general.</p> <p>21 A. No, I don't know if Sun changed</p> <p>22 their policies at that point in time, so I can't</p> <p>23 answer that question.</p> <p>24 Q. When you were at Sandalwood, should</p>

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23 (Pages 86 to 89)

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<p>1 an employee be terminated after the first or 2 second no call/no show? 3 A. The employee should have been 4 terminated after the first no call/no show. 5 Q. Didn't you say earlier in your 6 deposition testimony that the employees could 7 have more than one? 8 A. Yes, but I believe that the policy 9 with Sun was no call/no show unless it's 10 self-termination. 11 Q. Are you sure that was the policy or 12 do you know? 13 A. Again, I'm not, I'm not 100 percent 14 certain that was the policy. It's applied on an 15 individual basis. 16 Q. With discretion? 17 A. With discretion. 18 Q. As to whether a second no call/no 19 show could be accepted? 20 A. Yes. 21 MR. GRIGGS: Form of the question. 22 MR. SHEA: Can we mark that, 23 please? 24</p>	<p>1 Steve. 2 Q. What was the termination date? 3 A. 6/16/04. 4 Q. Do you know what the reason for the 5 termination was or no? 6 A. The no call/no show. 7 Q. Who terminated that employee? 8 A. It appears I did. 9 Q. Did anyone else, was anyone 10 involved in that termination? 11 A. I do not think so. 12 Q. Do you recall the circumstances of 13 that no call/no show? 14 A. No. 15 Q. Do you know why you terminated that 16 Employee No. 7 and didn't give that employee 17 another chance? 18 A. No. 19 Q. Could that employee have been 20 eligible for another chance depending on the 21 circumstances? 22 A. No. 23 Q. No? 24 A. Termination only came after a</p>
Page 87	Page 89
<p>1 (Exhibit 5, Employee #7 File, 2 marked) 3 4 Q. (By Mr. Shea) Focusing on 5 Employee No. 7 which we've marked as Exhibit 5. 6 That file was marked as Exhibit 5, do you see 7 any no call/no shows in that file? 8 Do you see any no call/no shows in 9 that file? 10 A. No call/no show 6/16/04. 11 Q. Do you know how many no call/no 12 shows Employee No. 7 had? 13 A. No. 14 Q. Can you tell from the file? 15 A. It appears to be one. 16 Q. Was this employee terminated for a 17 no call/no show? 18 A. I do not know. 19 Q. Was this employee terminated? 20 A. I do believe so. 21 Q. You don't believe so? 22 A. I do believe so. 23 Q. Why do you say that? 24 A. Because it says terminated per</p>	<p>1 serious reflection in reviewing the records. 2 Q. Do you remember what you were 3 reflected on with respect to Employee No. 7? 4 A. No. 5 Q. All I'm asking you whether there 6 would be circumstances, not necessarily with 7 this employee, but circumstances that could have 8 allowed you to keep Employee No. 7 or any other 9 employee who had a first no call/no show? 10 MR. GRIGGS: Form. 11 THE WITNESS: No. 12 Q. (By Mr. Shea) Not with Employee 13 No. 7? 14 A. I don't recall anything with this 15 employee. 16 Q. What about with other employees, 17 did you give other employees more that one no 18 call/no show? 19 A. Yes, it's indicated in the files 20 that we reviewed. 21 Q. Which files, Employee 2? 22 A. Employee 2 I saw two no call/no 23 shows. 24 Q. You don't recall why that employee</p>

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24 (Pages 90 to 93)

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<p>1 was given more than one no call/no show?</p> <p>2 A. No.</p> <p>3 MR. SHEA: Can you mark that,</p> <p>4 please?</p> <p>5</p> <p>6 (Exhibit 6, Employee #9 File,</p> <p>7 marked)</p> <p>8</p> <p>9 Q. (By Mr. Shea) Can you look at</p> <p>10 what's been marked as Exhibit 6?</p> <p>11 MR. SHEA: Off the record.</p> <p>12</p> <p>13 (Off record discussion)</p> <p>14</p> <p>15 MR. SHEA: Back on the record.</p> <p>16 Q. (By Mr. Shea) Was Employee No. 9</p> <p>17 employed with the company for 15 plus years?</p> <p>18 A. This one?</p> <p>19 Q. Yes. Do you recall that employee?</p> <p>20 A. It looks like she was termed before</p> <p>21 I got there in '03.</p> <p>22 Q. It looks like she was counseled on</p> <p>23 8/20/1996 for being late to work four times in</p> <p>24 one week?</p>	<p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Was this Employee No. 9 given a</p> <p>4 verbal warning on July 10 of 2003?</p> <p>5 A. A verbal warning?</p> <p>6 Q. Yes, on July 10, 2003?</p> <p>7 A. I don't see that.</p> <p>8 Q. You don't see that. Was employee</p> <p>9 No. 9 tardy 11 times and absent during a</p> <p>10 two-and-a-half month period and given a verbal</p> <p>11 warning?</p> <p>12 A. What was the date?</p> <p>13 Q. I asked you about a verbal warning</p> <p>14 that may have been issued on July 10 of '03.</p> <p>15 A. 1/21/03 there's a written warning.</p> <p>16 Q. I was asking you about 7/10/03</p> <p>17 within a period of two and a half months. Then</p> <p>18 I asked you whether this employee was tardy 11</p> <p>19 times and absent during a two-and-a-half month</p> <p>20 period and was given a verbal warning, do you</p> <p>21 see that?</p> <p>22 A. 11 times, two and a half months.</p> <p>23 Q. Is that a violation of policy at</p> <p>24 SunBridge?</p>
Page 91	Page 93
<p>1 A. What was the date again, please?</p> <p>2 Q. 8/20/96 counseling for being late</p> <p>3 to work four times in one week, does that look</p> <p>4 accurate?</p> <p>5 A. Yes.</p> <p>6 Q. On 9/21/97 the employee was</p> <p>7 counseled for behavioral issues, do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. By the way, these are all CNAs,</p> <p>11 right, these employee files?</p> <p>12 A. Yes.</p> <p>13 Q. And on 11/20/98 the employee was</p> <p>14 counseled for patient safety, do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And on 12/3/98 the employee was</p> <p>17 counseled, given a written warning for</p> <p>18 behavioral issues, do you see that?</p> <p>19 A. 12/3?</p> <p>20 Q. '98, yes. Written warning for</p> <p>21 behavioral issues?</p> <p>22 A. Yes.</p> <p>23 Q. Then on 12/8 the written warning</p> <p>24 was given for a policy violation, do you see</p>	<p>1 A. I would say yes.</p> <p>2 Q. Why was the policy bent for this</p> <p>3 individual?</p> <p>4 A. I do not know.</p> <p>5 Q. You referred to a note on December</p> <p>6 1, '03. Was Employee No. 9 written up and/or</p> <p>7 suspended on 12/1/03 and if so, why?</p> <p>8 A. I do not know.</p> <p>9 Q. Was the employee suspended on</p> <p>10 12/1/03 for a strong odor of alcohol and</p> <p>11 refusing alcohol testing and laying in bed with</p> <p>12 a resident?</p> <p>13 A. I do not know.</p> <p>14 Q. On 12/10. You don't know.</p> <p>15 If that occurred, if all of what I</p> <p>16 have just covered occurred, should that employee</p> <p>17 have been terminated?</p> <p>18 A. Yes.</p> <p>19 Q. You don't know why that employee</p> <p>20 was not terminated?</p> <p>21 A. No.</p> <p>22 Q. Do you know whether Employee No. 9</p> <p>23 was ever impaired at work, intoxicated?</p> <p>24 MR. GRIGGS: Form.</p>

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<p>1 Q. (By Mr. Shea) You don't know?</p> <p>2 A. No.</p> <p>3 Q. You don't know either way?</p> <p>4 A. No.</p> <p>5 Q. Do you see a no call/no show</p> <p>6 policy in Employee No. 9's file?</p> <p>7 A. Yes.</p> <p>8 Q. What does that no call/no show</p> <p>9 policy say about no call/no shows?</p> <p>10 A. That "it is the policy of</p> <p>11 Sandalwood Convalescent Home for each employee</p> <p>12 to work scheduled hours and to personally call</p> <p>13 in well in advance of scheduled shift if unable</p> <p>14 to work. Failure to call in before start of the</p> <p>15 shift and not work scheduled hours is totally</p> <p>16 unacceptable. Such no call/no show shows lack</p> <p>17 of responsibility and demises ability to</p> <p>18 maintain high level of quality care given to our</p> <p>19 residents."</p> <p>20 Q. Let me stop you for a second. Was</p> <p>21 that the no call/no show policy in place at</p> <p>22 Sandalwood?</p> <p>23 MR. GRIGGS: Objection to form.</p> <p>24 Q. (By Mr. Shea) Was it?</p>	<p>1 Q. Can you continue on and read that,</p> <p>2 please?</p> <p>3 A. "Three no calls/no shows within a</p> <p>4 reasonable time frame is cause for termination."</p> <p>5 Q. So that says three no call/no</p> <p>6 shows, correct?</p> <p>7 A. Yes.</p> <p>8 Q. You don't know whether that was the</p> <p>9 policy in place when Wendy Gauthier worked</p> <p>10 there?</p> <p>11 A. No.</p> <p>12 Q. You don't know either way?</p> <p>13 A. No.</p> <p>14 Q. Correct, you don't?</p> <p>15 A. Correct.</p> <p>16 Q. Was this Employee No. 9</p> <p>17 terminated? I'll represent to you that I found</p> <p>18 nothing in the file that indicates Employee No.</p> <p>19 9 was terminated.</p> <p>20 Do you know?</p> <p>21 A. I didn't see anything.</p> <p>22 Q. Do you have an independent</p> <p>23 recollection or knowledge outside of Exhibit 6</p> <p>24 as to whether Employee No. 9 was terminated?</p>
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<p>1 A. I don't have anything to compare it</p> <p>2 to, so I would do not know.</p> <p>3 Q. Are you familiar with the policy,</p> <p>4 the no call/no show policy?</p> <p>5 A. Yes.</p> <p>6 MR. GRIGGS: Objection to form.</p> <p>7 THE WITNESS: You are asking me if</p> <p>8 I understand what I'm reading?</p> <p>9 Q. (By Mr. Shea) Have you seen the</p> <p>10 document before, have you?</p> <p>11 A. No, this was first time I've seen</p> <p>12 this document.</p> <p>13 Q. Have you seen a document that</p> <p>14 outlines in writing or specifies a no call/no</p> <p>15 show policy at Sandalwood, have you ever seen</p> <p>16 such a policy?</p> <p>17 MR. GRIGGS: Objection to form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 Q. (By Mr. Shea) Is there a no</p> <p>20 call/no show policy?</p> <p>21 A. I don't know.</p> <p>22 Q. Was there one when Wendy Gauthier</p> <p>23 was there?</p> <p>24 A. I don't know.</p>	<p>1 A. No.</p> <p>2 Q. So for all you know Employee No. 9</p> <p>3 could still be there, correct?</p> <p>4 A. Correct. Unlikely, but correct.</p> <p>5 MR. SHEA: Off the record.</p> <p>6</p> <p>7 (A recess was taken)</p> <p>8</p> <p>9 MR. SHEA: Back on the record. Can</p> <p>10 we have that marked, please?</p> <p>11</p> <p>12 (Exhibit 7, Employee #10 File,</p> <p>13 marked)</p> <p>14</p> <p>15 Q. (By Mr. Shea) Take a look at</p> <p>16 Exhibit 7, please, that's Employee No. 10. My</p> <p>17 question is was Employee No. 10 terminated for</p> <p>18 excessive call outs?</p> <p>19 While you are looking for the</p> <p>20 answer to that, can you tell me what a call out</p> <p>21 is, do you know what a call out is?</p> <p>22 A. A call out is when an employee is</p> <p>23 scheduled for a certain day and notifies the</p> <p>24 facility they will not report to work.</p>

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<p>1 Q. Let me cut to the chase. Was this 2 employee counseled on 12/10/04 during the 90-day 3 probation period for three call outs? 4 A. Excessive absenteeism employee will 5 have no call out. Doesn't say the amount. 6 Excessive call outs. Employee has had three 7 call outs. 8 Q. Was this employee on probation? 9 A. During probation, yes. 10 Q. Wendy Gauthier wasn't on probation, 11 correct? 12 MR. GRIGGS: Objection to the form. 13 Q. (By Mr. Shea) You may answer, is 14 that correct? 15 Wendy Gauthier was not on 16 probation at the time of her termination? 17 A. No, I believe she was not on 18 probation. 19 Q. Not on probation, correct? 20 A. Yes. 21 Q. This employee was on probation, 22 correct, and counseling on 12/10/04? 23 A. Yes. 24 Q. For what?</p>	<p>1 2 (Off record discussion) 3 4 MR. SHEA: Back on the record. 5 Q. (By Mr. Shea) Employee No. 10 was 6 also a CNA just like Wendy Gauthier? 7 A. Yes. 8 Q. In Employee No. 10's case, was 9 there a verbal written warning, a first written 10 warning and a final written warning combined to 11 formulate one warning which resulted in 12 termination? 13 A. I see a termination here on May 14 25th. 15 Q. Why was this employee terminated, 16 do you know? 17 A. No, but it's not signed by me. 18 Q. Not signed by whom? 19 A. It has my name, but it's not signed 20 by me. 21 Q. You don't recall Employee No. 10 22 though? 23 A. No, nor do I recall writing up 24 something like that.</p>
Page 99	Page 101
<p>1 A. Excessive call outs. 2 Q. Do you see the performance plan 3 there, the employee's performance plan where the 4 employee was to have no sick call outs for a 5 period of 90 days? 6 A. Yes. 7 Q. This employee was not terminated, 8 Employee No. 10 upon calling out on January 5, 9 2005 during the 90-day period, correct? 10 A. No. 11 Q. Pardon me? She was not terminated 12 upon calling out on January 5, 2005, correct? 13 A. I don't see where she called out on 14 January 5th. Okay, I do. No, she was not 15 terminated. 16 Q. Should she have been terminated at 17 that point? 18 A. I do not know. I don't know the 19 extenuating circumstances. 20 Q. There could have been extenuating 21 circumstances which would allow the employees to 22 stay on? 23 MR. GRIGGS: Can we go off the 24 record?</p>	<p>1 Q. The this you're referring to, can 2 you tell me what that is? 3 A. This document stating that she is 4 now terminated. 5 Q. What's the date of that document? 6 A. May 15th. 7 Q. '05, yes? 8 A. (Witness complying) 9 Q. Let me show you the next file. 10 A. I don't recall this. This is not 11 my style of writing. 12 MR. SHEA: Can I have that 13 marked? 14 15 (Exhibit 8, Employee #13 File, 16 marked) 17 18 Q. (By Mr. Shea) Can you look at 19 Exhibit 8 and this is Employee No. 13. 20 Let me move along. This employee 21 had several tardinesses and call outs and two no 22 call/no shows, correct? 23 A. Yes. 24 Q. Why was this employee not</p>

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<p>1 terminated at least for the two no call/no 2 shows, not to mention the tardinesses and call 3 outs, do you know? 4 A. No, I do not know. 5 Q. Could there have been extenuating 6 circumstances that allowed the employee to stay 7 on after the first no call/no show? 8 A. Yes. 9 Q. You don't know what they were in 10 this case? 11 A. No. 12 Q. You don't know if there were 13 extenuating circumstances with respect to 14 Employee No. 13? 15 A. Correct. 16 Q. Thank you. 17 MR. SHEA: Let's mark this, please? 18 19 (Exhibit 9, Employee #15 File, 20 marked) 21 22 Q. (By Mr. Shea) Looking at Employee 23 No. 15 which is Exhibit 9, that file, did this 24 employee have attendance issues, as well as,</p>	<p>1 marked) 2 3 Q. (By Mr. Shea) Before you take a 4 look at Exhibit 10, where were these personnel 5 files kept? I know you started to tell me that. 6 Were they kept in the custody of Ann Kendall or 7 somebody else? 8 A. Somebody else. 9 Q. Do you remember that name, yes or 10 no? 11 A. No. 12 Q. Physically where were they located 13 in relation to your office, they were under lock 14 and key? 15 A. Yes. 16 Q. These personnel files, yes? 17 A. Yes. 18 Q. Did Ann Kendall have any access to 19 them? 20 A. I do not know. 21 Q. Who's responsibility was it to 22 maintain the personnel file and the records? 23 A. The department head, the staff 24 development coordinator.</p>
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<p>1 patient safety and care issues? 2 A. Excessive absenteeism, written 3 warning. 4 Q. So yes, this employee has 5 attendance issues? 6 A. Yes. 7 Q. Why wasn't Employee No. 15 8 terminated for attendance issues? 9 A. I do not know. 10 Q. That same employee had patient care 11 issues and safety issues or can you tell from 12 the file? 13 A. This document states a resident 14 falling out of bed. That would be a patient 15 care issue. 16 Q. Why wasn't this employee 17 terminated? 18 A. No, I do not know. 19 Q. Can I take that back from you? 20 A. (Witness complying) 21 MR. SHEA: Can you mark that as 22 the next one? 23 24 (Exhibit 10, Employee #18 File,</p>	<p>1 Q. Did Ann Kendall have any role in 2 maintaining the personnel file? 3 A. No. 4 Q. If I showed her the personnel 5 files, would she say that she's seen them 6 before? 7 MR. GRIGGS: Form. 8 THE WITNESS: I don't know. 9 Q. (By Mr. Shea) Have you ever seen 10 her looking at or heard of her looking at 11 personnel files of other employees or no? 12 A. I don't recall. 13 Q. Looking at Exhibit 10. 14 MR. SHEA: Off the record. 15 16 (Off record discussion) 17 18 MR. SHEA: Back on the record. 19 Q. (By Mr. Shea) Employees 15 and 18 20 are CNAs, correct? 21 A. Yes. 22 Q. Looking at Employee No. 18's file, 23 Exhibit 10, can you tell me why Employee 18 was 24 terminated?</p>

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<p>1 A. No.</p> <p>2 Q. Can I take that back from you?</p> <p>3 A. (Witness complying)</p> <p>4 MR. SHEA: Can you mark that?</p> <p>5</p> <p>6 (Exhibit 11, Employee #22 File,</p> <p>7 marked)</p> <p>8</p> <p>9 MR. SHEA: Off the record.</p> <p>10</p> <p>11 (Off record discussion)</p> <p>12</p> <p>13 MR. SHEA: Back on the record.</p> <p>14 Q. (By Mr. Shea) Employee No. 22,</p> <p>15 Exhibit 11, that employee's personnel file,</p> <p>16 focusing on that, was the employee terminated</p> <p>17 and for what reason?</p> <p>18 A. For attendance.</p> <p>19 Q. On what date?</p> <p>20 A. 5/10/04.</p> <p>21 Q. Do you know what the last date that</p> <p>22 employee worked was?</p> <p>23 A. At this time, no.</p> <p>24 Q. Do you know whether that Employee</p>	<p>1 marked)</p> <p>2</p> <p>3 MR. SHEA: Off the record.</p> <p>4</p> <p>5 (Off record discussion)</p> <p>6</p> <p>7 MR. SHEA: Back on the record.</p> <p>8 Q. (By Mr. Shea) Can you tell from</p> <p>9 Employee No. 24's file whether Employee 24 had</p> <p>10 attendance issues?</p> <p>11 A. Excessive absenteeism.</p> <p>12 Q. Are there no call/no shows in the</p> <p>13 file as well?</p> <p>14 While you are looking for the</p> <p>15 answer to that question, let me ask you, did Ann</p> <p>16 Kendall have any reason to put any documentation</p> <p>17 in any personnel file?</p> <p>18 MR. GRIGGS: Form.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 Q. (By Mr. Shea) None that you are</p> <p>21 aware of?</p> <p>22 A. No.</p> <p>23 Q. Meaning, correct?</p> <p>24 A. Correct. I see no paperwork</p>
Page 107	Page 109
<p>1 No. 22 committed any no call/no shows?</p> <p>2 A. No.</p> <p>3 Q. Is there something in the employee</p> <p>4 file that indicated that Employee No. 22 did not</p> <p>5 show up for her shifts and did not pick up her</p> <p>6 schedule?</p> <p>7 A. No call/no show, 3/20/04.</p> <p>8 Q. How many no call/no shows did this</p> <p>9 employee have, do you know?</p> <p>10 A. I don't know.</p> <p>11 Q. And the no call/no show is</p> <p>12 indicated that occurred on 3/20/04 or 3/10/04?</p> <p>13 A. It would be 3/20/04.</p> <p>14 Q. Do you know why this employee was</p> <p>15 not terminated until May 10, '04?</p> <p>16 A. No.</p> <p>17 Q. Do you know how many days the</p> <p>18 employees worked between 3/20/04 and 5/10/04?</p> <p>19 A. No.</p> <p>20 Q. Can I have that back, please?</p> <p>21 A. (Witness complying)</p> <p>22 MR. SHEA: Can you mark that?</p> <p>23</p> <p>24 (Exhibit 12, Employee #24 File,</p>	<p>1 indicated on no call/no show.</p> <p>2 Q. Can I have that back, please?</p> <p>3 A. (Witness complying)</p> <p>4 MR. SHEA: Will you mark that,</p> <p>5 please?</p> <p>6</p> <p>7 (Exhibit 13, Employee #26 File,</p> <p>8 marked)</p> <p>9</p> <p>10 MR. SHEA: Off the record.</p> <p>11</p> <p>12 (Off record discussion)</p> <p>13</p> <p>14 MR. SHEA: Back on the record.</p> <p>15 Q. (By Mr. Shea) Looking at Exhibit</p> <p>16 13 which is Employee No. 26.</p> <p>17 What is the reason for the</p> <p>18 termination of Employee No. 26, can you tell me?</p> <p>19 A. Quit.</p> <p>20 Q. Does it indicate why?</p> <p>21 A. Too many call outs.</p> <p>22 Q. The call outs, again, are calling</p> <p>23 in sick or calling out for whatever reason?</p> <p>24 A. Yes.</p>

CATUOGNO COURT REPORTING SERVICES**Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI**

STEPHEN G. COPPER**February 8, 2007**

29 (Pages 110 to 113)

Page 110	Page 112
<p>1 Q. A no call/no show is just what it</p> <p>2 says, no call, no show?</p> <p>3 A. Yes.</p> <p>4 Q. Would this Employee No. 26 be</p> <p>5 eligible for rehire?</p> <p>6 A. I don't know. It says no on the</p> <p>7 termination. Personal action notice, no. And</p> <p>8 again for absenteeism.</p> <p>9 MR. SHEA: I'm just going to take</p> <p>10 two minutes and I think we are done.</p> <p>11</p> <p>12 (A recess was taken)</p> <p>13</p> <p>14 MR. SHEA: Back on the record.</p> <p>15 Q. (By Mr. Shea) I apologize if I</p> <p>16 asked this. Are you aware of Wendy Gauthier</p> <p>17 ever being injured at work?</p> <p>18 A. No.</p> <p>19 Q. At SunBridge?</p> <p>20 A. No.</p> <p>21 Q. Lifting a patient or otherwise?</p> <p>22 A. No.</p> <p>23 MR. SHEA: Nothing further.</p> <p>24 MR. GRIGGS: I just have a couple</p>	<p>1 employee files, Exhibit 6, I believe?</p> <p>2 I'm going to again show you the</p> <p>3 document entitled no call/no show policy and</p> <p>4 request you to look at the date at the bottom?</p> <p>5 A. 12/31/90.</p> <p>6 Q. That's December 31, 1990?</p> <p>7 A. Yes.</p> <p>8 Q. Was the Sandalwood Convalescent</p> <p>9 Home, to your knowledge, operated by SunBridge</p> <p>10 in December of 1990?</p> <p>11 MR. SHEA: Objection.</p> <p>12 THE WITNESS: No.</p> <p>13 Q. (By Mr. Griggs) So was this the</p> <p>14 SunBridge no call/no show policy at the time of</p> <p>15 Wendy Gauthier's employment?</p> <p>16 MR. SHEA: Objection.</p> <p>17 THE WITNESS: No.</p> <p>18 Q. (By Mr. Shea) At the time of Wendy</p> <p>19 Gauthier's employment, was your understanding</p> <p>20 that the no call/no show policy was that one no</p> <p>21 call/no show was a terminable offense?</p> <p>22 MR. SHEA: Objection.</p> <p>23 THE WITNESS: Yes.</p> <p>24 Q. (By Mr. Griggs) You are certain of</p>
Page 111	Page 113
<p>1 things to follow up.</p> <p>2</p> <p>3</p> <p>4 EXAMINATION BY MR. GRIGGS:</p> <p>5</p> <p>6 Q. Do you know what the term at-will</p> <p>7 employment means?</p> <p>8 A. Yes.</p> <p>9 Q. What does this mean in your own</p> <p>10 words?</p> <p>11 A. An employee selects to work at a</p> <p>12 certain facility.</p> <p>13 Q. Does it mean that they are to be</p> <p>14 employed for a specific term of time?</p> <p>15 MR. SHEA: Objection.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q. (By Mr. Griggs) Does it mean that</p> <p>18 you can terminate them at any time?</p> <p>19 MR. SHEA: Objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 Q. (By Mr. Griggs) Was Wendy Gauthier</p> <p>22 an at-will employee?</p> <p>23 A. Yes.</p> <p>24 Q. Can I see file No. 9 of the</p>	<p>1 that?</p> <p>2 MR. SHEA: Objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. (By Mr. Griggs) I have one last</p> <p>5 question about staffing a nursing home in</p> <p>6 general. As an administrator of a nursing home,</p> <p>7 do you face challenges of finding competent</p> <p>8 staff for your nursing home?</p> <p>9 MR. SHEA: Objection.</p> <p>10 THE WITNESS: Yes.</p> <p>11 Q. (By Mr. Griggs) While you were the</p> <p>12 administrator at SunBridge of Sandalwood in</p> <p>13 Oxford, Massachusetts, did you find challenges</p> <p>14 with regard to staffing your facility?</p> <p>15 MR. SHEA: Objection.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q. (By Mr. Griggs) Did you have</p> <p>18 trouble finding competent CNAs?</p> <p>19 MR. SHEA: Objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 Q. (By Mr. Griggs) In your opinion,</p> <p>22 do you think that leniency with regard to</p> <p>23 attendance policies may have been driven by</p> <p>24 these challenges?</p>

CATUOGNO COURT REPORTING SERVICES**Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI**

STEPHEN G. COPPER**February 8, 2007**

30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 MR. SHEA: Objection. 2 THE WITNESS: Yes. 3 MR. GRIGGS: No further questions. 4 MR. SHEA: Nothing further. 5 6 (Deposition concluded at 12:49 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 116</p> <p>1 Today's date: March 3, 2007 2 To: K. Scott Griggs, Esq. 3 Copied to: Michael O. Shea, Esq. 4 From: Elisabeth Zahariadis 5 Deposition of: Stephen G. Copper 6 Taken: February 8, 2007 7 Action: WENDY GAUTHIER 8 Vs. SUNHEALTH SPECIALTY 9 SERVICES, INC., ET AL. 10 11 12 Enclosed is a copy of Mr. Copper's 13 deposition. Pursuant to the Rules of Civil 14 Procedure, Mr. Copper has thirty days to sign 15 the deposition from today's date. 16 Please have Mr. Copper sign the enclosed 17 signature page. If there are any errors, please 18 have him mark the page, line and error on the 19 enclosed correction sheet. He should not mark 20 the transcript itself. This addendum should be 21 forwarded to all interested parties. 22 Thank you for your cooperation in this 23 matter. 24</p>
<p style="text-align: right;">Page 115</p> <p>1 I, ELISABETH ZAHARIADIS, a Notary Public 2 in and for the Commonwealth of Massachusetts, do 3 hereby certify that STEPHEN G. COPPER appeared 4 before me, satisfactorily identified himself, on 5 the 8th day of February, 2007, at Worcester, 6 Massachusetts, and was by me duly sworn to 7 testify to the truth and nothing but the truth 8 as to his knowledge touching and concerning the 9 matters in controversy in this cause; that he 10 was thereupon examined upon his oath and said 11 examination reduced to writing by me; and that 12 the statement is a true record of the testimony 13 given by the witness, to the best of my 14 knowledge and ability. 15 I further certify that I am not a relative 16 or employee of counsel/attorney for any of the 17 parties, nor a relative or employee of such 18 parties, nor am I financially interested in the 19 outcome of the action. 20 WITNESS MY HAND this 3rd day of March, 21 2007. 22 23 Elisabeth Zahariadis My Commission expires: 24 Notary Public October 5, 2012</p>	<p style="text-align: right;">Page 117</p> <p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MASSACHUSETTS 3 4 ***** 5 WENDY GAUTHIER, * 6 Plaintiff * 7 vs. *No.: 05cv40119-FDS 8 SUNHEALTH SPECIALTY * 9 SERVICES, INC. and SUNBRIDGE* 10 HEALTHCARE CORPORATION, * 11 Defendants * 12 ***** 13 14 15 I, STEPHEN G. COPPER, do hereby certify, 16 under the pains and penalties of perjury, that 17 the foregoing testimony is true and accurate, to 18 the best of my knowledge and belief. 19 WITNESS MY HAND, this day of 20 2007. 21 22 _____ 23 STEPHEN G. COPPER 24 EZ</p>

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STEPHEN G. COPPER

February 8, 2007

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1	CORRECTION SHEET		
2	DEPONENT: Stephen G. Copper		
3	CASE: Gauthier V. Sunhealth Specialty Services		
4	DATE TAKEN: February 8, 2007		
5	*****		
6	PAGE/LINE/ CHANGE OR CORRECTION AND REASON		
7	*****		
8	___/___/___	___	___
9	___/___/___	___	___
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EXHIBIT 4

ANN MARIE KENDALL

February 8, 2007

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3

4

5 *****

6 WENDY GAUTHIER, *

7 Plaintiff *

8 vs. *No.: 05cv40119-FDS

9 SUNHEALTH SPECIALTY *

10 SERVICES, INC. and SUNBRIDGE *

11 HEALTHCARE CORPORATION, *

12 Defendants *

13 *****

14

15 DEPOSITION OF: ANN MARIE KENDALL

16 CATUOGNO COURT REPORTING SERVICES

17 446 Main Street

18 Worcester, Massachusetts

19 February 8, 2007 1:08 p.m.

20

21

22 Elisabeth Zahariadis

23 Certified Shorthand Reporter

24 APPEARANCES:

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Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI

ANN MARIE KENDALL**February 8, 2007**

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 Representing the Plaintiff:</p> <p>3 LAW OFFICE OF MICHAEL O. SHEA, P.C.</p> <p>4 451 Main Street</p> <p>5 Wilbraham, MA 01095</p> <p>6 BY: MICHAEL O. SHEA, ESQ.</p> <p>7 (413) 596-8005 FAX 596-8095</p> <p>8</p> <p>9 Representing the Defendant:</p> <p>10 LAWSON & WEITZEN, LLP</p> <p>11 88 Black Falcon Avenue</p> <p>12 Boston, MA 02210</p> <p>13 BY: MICHAEL WILLIAMS, ESQ.</p> <p>14 (617) 439-4990 FAX 439-3987</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 ANN MARIE KENDALL, Deponent, having first</p> <p>2 been satisfactorily identified and duly sworn,</p> <p>3 deposes and states as follows:</p> <p>4</p> <p>5 MR. SHEA: Usual stipulations? I</p> <p>6 don't know if you want to have her read and</p> <p>7 sign.</p> <p>8 MR. GRIGGS: Read and sign, 30</p> <p>9 days.</p> <p>10</p> <p>11</p> <p>12 EXAMINATION BY MR. SHEA:</p> <p>13</p> <p>14 Q. Ms. Kendall, can you state your</p> <p>15 full name?</p> <p>16 A. Ann Marie Kendall.</p> <p>17 Q. Where do you reside?</p> <p>18 A. I reside at 12 Lakeview Avenue,</p> <p>19 Dudley, Massachusetts.</p> <p>20 Q. How long have you lived there?</p> <p>21 A. Three or four months.</p> <p>22 Q. Do you own or rent there?</p> <p>23 A. We own.</p> <p>24 Q. Do you have a residence anywhere</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: ANN MARIE KENDALL</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Shea 4</p> <p>7 Mr. Griggs 67</p> <p>8</p> <p>9 FURTHER EXAMINATION BY: PAGE:</p> <p>10 Mr. Shea 69</p> <p>11 Mr. Griggs 84</p> <p>12</p> <p>13 EXHIBIT: PAGE:</p> <p>14 Exhibit 1, 1/29/07 Letter.....12</p> <p>15</p> <p>16</p> <p>17 Mr. Shea retained exhibit.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 else?</p> <p>2 A. Currently, yes, in Florida.</p> <p>3 Q. Is that like a second home?</p> <p>4 A. No, it's a home we're trying to</p> <p>5 sell.</p> <p>6 Q. Where is that located?</p> <p>7 A. Dunedin, D-U-N-E-D-I-N, Florida.</p> <p>8 Q. What's the address?</p> <p>9 A. 1239 Lazy Lake Road.</p> <p>10 Q. In Dunedin?</p> <p>11 A. Do you want the zip code?</p> <p>12 Q. Sure.</p> <p>13 A. 34698.</p> <p>14 Q. Have you ever been deposed before?</p> <p>15 A. No.</p> <p>16 Q. No one is representing you in this</p> <p>17 deposition, you don't have legal counsel for</p> <p>18 purposes of this deposition?</p> <p>19 MR. GRIGGS: I'm here on your</p> <p>20 behalf.</p> <p>21 MR. SHEA: Are you representing her</p> <p>22 in this deposition?</p> <p>23 MR. GRIGGS: Yes.</p> <p>24 Q. (By Mr. Shea) I'm sorry, have you</p>

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3 (Pages 6 to 9)

Page 6	Page 8
<p>1 ever been deposed before or no? That's what 2 this is today. 3 A. No, I have not. 4 Q. Have you ever testified in a court? 5 A. I've testified, I don't know, in 6 unemployment hearing. 7 Q. Other than that, have you testified 8 in court? 9 A. No. 10 Q. Just a couple of quick ground rules 11 since you've never been deposed before. You 12 have to answer audibly for the record. I'm 13 going to ask you a few questions, it shouldn't 14 be too long. The stenographer needs to type 15 down what I'm saying and you're saying. So I 16 would ask that you let me get my question out 17 before you start your answer and I won't cut you 18 off hopefully when you answer. And I won't 19 start my next question until you've answered the 20 last one. Okay? 21 A. Yes. 22 Q. So you can't do a nod of the head 23 or mm-hmm because we have to get what you're 24 saying on the record. So a yes or no or an</p>	<p>1 conversations with this attorney who's here 2 today on your behalf? 3 A. No, sir. 4 Q. Have you had conversations with 5 your husband about this deposition? 6 A. Yes. 7 Q. What's your husband's name? 8 A. Jeffrey H. Kendall. 9 Q. He lives with you? 10 A. Yes, he does. 11 Q. You've never talked to me before 12 today, correct? 13 A. No. 14 Q. In fact, you've never talked to me 15 prior to the commencement of this deposition, 16 correct? 17 A. No. 18 Q. Meaning correct? 19 A. Meaning correct I have not spoken 20 with you. 21 Q. You've not spoken with anyone from 22 my office prior to the commencement of this 23 deposition? 24 A. No, sir.</p>
Page 7	Page 9
<p>1 explanation for an answer is fine. 2 Do you understand? 3 A. Yes. 4 Q. Are you under the influence of any 5 medication or anything that may impair your 6 ability to answer questions today? 7 A. No. 8 Q. Are you currently employed? 9 A. Yes, I am. 10 Q. Where do you work? 11 A. At Overlook Masonic Home. 12 Q. Where is that located? 13 A. Charlton, Massachusetts. 14 Q. What do you do there? 15 A. I work as a registered nurse. 16 Q. How long have you held that 17 position? 18 A. I think I started right after the 19 first of the year, January 3rd, 4th, somewhere 20 in that area. 21 Q. Have you talked to anyone about 22 this deposition? 23 MR. GRIGGS: Besides your attorney. 24 Q. (By Mr. Shea) Outside of</p>	<p>1 Q. Meaning correct? 2 A. That's correct I have not spoken 3 with anyone from your office. 4 Q. Your husband lives with you? 5 A. Yes, he does. 6 Q. How long have you been Mary? 7 A. Six years. 8 Q. What conversations did you have 9 with him about this deposition? 10 A. I asked him if he would send a 11 letter, I had a letter prepared because I don't 12 know what you call it, the information I had to 13 appear. 14 Q. Under a subpoena? 15 A. Okay. Came to our current address 16 only because the mailman, our mailman knows my 17 husband, but it was really sent to a prior 18 address. So the conversation was, it was just 19 received and I work 11:00 to 7:00 and could not 20 physically be here and asked him if he would 21 please deliver the letter stating why I could 22 not be here, deliver a letter here. 23 Q. Meaning at this court reporting 24 office?</p>

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4 (Pages 10 to 13)

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<p>1 A. That's correct because I didn't 2 want it to appear as if I was purposely -- 3 Q. Avoiding the deposition. 4 A. Avoiding the deposition. That is 5 the conversation that I had. 6 Q. With your husband? 7 A. That's correct, sir. 8 Q. Is that the only conversation you 9 had about this case or the deposition? 10 A. Mm-hmm. 11 Q. Yes? 12 A. Yes, sir. 13 Q. Other than talking to your husband 14 and outside of any conversation you may have had 15 with lawyers for SunBridge, have you talked to 16 anyone about this deposition or this case? 17 A. No, sir. 18 Q. What did you say in the letter 19 that, did your husband hand deliver the letter 20 to this court reporting office? 21 A. Yes. 22 Q. That was on the last date that you 23 think you may have been scheduled for a 24 deposition in this office in this case?</p>	<p>1 A. I recall that she was an employee. 2 Q. Where? 3 A. Sandalwood. 4 Q. Do you recall anything else or no 5 about Wendy Gauthier other than she was an 6 employee? 7 A. I recall that she worked 11:00 to 8 7:00 and that at the time there was some 9 attendance issues. 10 Q. You don't recall what those 11 attendance issues are or were, do you? 12 A. Not specifically. 13 Q. What do you recall about any 14 attendance issues, if anything? 15 A. I recall that I know on at least 16 one occasion she was a no call/no show and there 17 were some call outs. 18 MR. SHEA: Can I have that marked, 19 please? 20 21 (Exhibit 1, 1/29/07 Letter, marked) 22 23 Q. (By Mr. Shea) I'm going to show 24 you a copy of what you said your husband hand</p>
Page 11	Page 13
<p>1 A. Yes, and I don't remember the exact 2 date. 3 Q. That's okay. A couple weeks ago 4 maybe? 5 A. Approximately. 6 Q. What did the letter say, do you 7 remember? 8 A. I don't remember offhand. It was 9 something to the effect that I wouldn't be able 10 to be here because I worked 11:00 to 7:00 and I 11 did not recall anything about. 12 Q. Anything about Wendy Gauthier? 13 A. Yeah. I think it was very short. 14 Q. Was the contents of the letter 15 accurate? 16 A. Yes, sir. 17 Q. You don't recall Wendy Gauthier or 18 anything about Wendy Gauthier; is that correct? 19 A. At the time of the letter, no, I 20 did not recall. 21 Q. Do you recall anything today or no? 22 A. I don't know, depends on. 23 Q. Do you recall anything about Wendy 24 Gauthier today, sitting here today?</p>	<p>1 delivered to this court reporting office. And I 2 would ask you to look at the second to the last 3 paragraph, by the way, that's your signature 4 down at the bottom? 5 A. Mm-hmm. 6 Q. You have to answer yes? 7 A. Yes, sir. 8 Q. It's dated January 29, 2007, right? 9 A. Yes, sir. 10 Q. This is the letter that you had 11 written and had your husband hand deliver to 12 this court reporting office, correct? 13 A. Yes, sir. 14 Q. The second to last paragraph says, 15 "most importantly, I have no recollection of 16 Wendy Gauthier as either a resident or employee 17 at SunBridge?" 18 A. That's correct. 19 Q. Have you had any conversations with 20 anyone since January 29, 2007 about Wendy 21 Gauthier? 22 MR. GRIGGS: Except your counsel? 23 MR. SHEA: No including, I don't 24 want the content.</p>

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5 (Pages 14 to 17)

Page 14	Page 16
<p>1 THE WITNESS: The only</p> <p>2 conversation I had was I did make a phone</p> <p>3 call to Alan Bernard after receiving the</p> <p>4 letter, the summons -- am I using the</p> <p>5 correct terminology?</p> <p>6 Q. (By Mr. Shea) Subpoena.</p> <p>7 A. Subpoena. And stating to him that</p> <p>8 I really at that time had no idea who this</p> <p>9 person was. I really and at that time I did</p> <p>10 not.</p> <p>11 Q. When was that conversation?</p> <p>12 A. I don't know what date this was.</p> <p>13 It was maybe the day before this letter.</p> <p>14 Q. The day before January 29th?</p> <p>15 A. I'm guessing. I don't know. What</p> <p>16 day was this?</p> <p>17 Q. You dated it up top, do you see</p> <p>18 that, January 29, 2007, can you read that?</p> <p>19 A. Yes, I can, sir.</p> <p>20 Q. Was it prior to that date or after</p> <p>21 that date?</p> <p>22 A. It could have even been the same</p> <p>23 date. I don't recall. Because I worked 11:00</p> <p>24 to 7:00, I came home I stayed awake in an</p>	<p>1 A. Yes, it was Cheryl in the business</p> <p>2 office.</p> <p>3 Q. What's Cheryl's last name, do you</p> <p>4 know?</p> <p>5 A. I don't recall.</p> <p>6 Q. So you called Mr. Bernard after</p> <p>7 this letter marked Exhibit 1, you think?</p> <p>8 A. No, prior to this letter.</p> <p>9 Q. What did Mr. Bernard say to you,</p> <p>10 what did you say to him?</p> <p>11 A. Mr. Bernard stated that he would be</p> <p>12 in contact with H. Ri and someone would be in</p> <p>13 contact with me.</p> <p>14 Q. Let's start with what did you say</p> <p>15 to him. How did you open the conversation?</p> <p>16 A. I opened the conversation by</p> <p>17 stating that I had received this letter,</p> <p>18 subpoena, and was not sure who the person was,</p> <p>19 I could not at that time recall and asked him</p> <p>20 what I should do. And at that time his response</p> <p>21 was that he would be in contact with HR and</p> <p>22 someone would be in contact with me.</p> <p>23 Q. How long was this conversation?</p> <p>24 A. Three minutes, two minutes.</p>
Page 15	Page 17
<p>1 attempt to contact Mr. Bernard to ask him if</p> <p>2 there was an attorney and who I should be</p> <p>3 talking to. That's it.</p> <p>4 Q. Why did you call Mr. Bernard, did</p> <p>5 you know who he was prior to?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Who is he?</p> <p>8 A. I think he was, I don't know his</p> <p>9 exact title, it would be executive vice</p> <p>10 president, but he was in charge of several of</p> <p>11 the Sandalwood facilities and I had known him in</p> <p>12 that text.</p> <p>13 Q. You called him on the phone?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Where's he located?</p> <p>16 A. I really don't know.</p> <p>17 Q. Is he in Massachusetts?</p> <p>18 A. I don't recall if he was in</p> <p>19 Massachusetts or New Hampshire.</p> <p>20 Q. How did you get his phone number?</p> <p>21 A. I called Sandalwood and asked for</p> <p>22 Mr. Bernard's phone number.</p> <p>23 Q. Then somebody there gave it to you,</p> <p>24 do you know who gave it to you?</p>	<p>1 Q. What phone did you dial him from?</p> <p>2 A. I dialed him from my home phone in</p> <p>3 the kitchen.</p> <p>4 Q. A land line, not a cell phone?</p> <p>5 A. Land line.</p> <p>6 Q. Did he tell you that he knew Wendy</p> <p>7 Gauthier?</p> <p>8 A. No, he did not tell me he knew</p> <p>9 Wendy Gauthier.</p> <p>10 Q. Who did you talk to next after that</p> <p>11 conversation about these depositions?</p> <p>12 A. I believe it was Mr. Griggs.</p> <p>13 Q. On what date was that?</p> <p>14 A. I don't recall the exact date.</p> <p>15 Q. How many days after this letter did</p> <p>16 you talk to Mr. Griggs, the one we've marked as</p> <p>17 Exhibit 1?</p> <p>18 A. You know, I do not recall.</p> <p>19 Q. Was it more than a couple days, was</p> <p>20 it more than a week, was it yesterday, do you</p> <p>21 have any sense?</p> <p>22 A. I'm going to say it was last week,</p> <p>23 Thursday or Friday.</p> <p>24 Q. How long was that conversation with</p>

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6 (Pages 18 to 21)

Page 18

1 Mr. Griggs?
 2 A. It was approximately five minutes
 3 or less.
 4 Q. Did you have any other
 5 conversations with Mr. Griggs or any other
 6 lawyers from Southbridge?
 7 A. I did not have any conversation
 8 with any lawyers from Southbridge.
 9 Q. Sorry, SunBridge.
 10 A. Okay, SunBridge.
 11 Q. Did you have any other
 12 conversations with Mr. Griggs other than that
 13 five-minute conversation you just referred to?
 14 A. I spoke with Mr. Griggs yesterday.
 15 Q. Was that over the phone?
 16 A. It was in person.
 17 Q. Where was that located, where did
 18 you meet?
 19 A. We met at a small restaurant.
 20 Q. Where?
 21 A. In I believe it's Auburn.
 22 Q. What's the name of the restaurant?
 23 A. The Picadilly Pub.
 24 Q. That was yesterday?

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1 A. That was yesterday.
 2 Q. What street is that on?
 3 A. I don't know.
 4 Q. Do you have any idea?
 5 A. It could be Route 12.
 6 Q. How long did you meet with Mr.
 7 Griggs yesterday at the Picadilly Pub?
 8 A. Approximately an hour.
 9 Q. Did he bring some documents with
 10 him?
 11 A. He had paperwork with him, yes.
 12 Q. Was anyone else present, was your
 13 husband there?
 14 A. No, he was not.
 15 Q. Was anyone else present?
 16 A. No one was present.
 17 Q. Did you bring any documents?
 18 A. I did not.
 19 Q. Did Mr. Griggs bring any documents?
 20 A. I don't know what Mr. Griggs
 21 brought, he had paperwork with him.
 22 Q. Did he show you any documents?
 23 A. He did not show me anything.
 24 Q. Did he talk with you about your

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1 testimony today in this deposition?
 2 A. We had a discussion.
 3 Q. About your testimony?
 4 A. Yes, sir.
 5 Q. Prior to yesterday, did he refresh
 6 your memory about anything?
 7 MR. GRIGGS: Objection to the form
 8 of the question. You are asking for some
 9 attorney/client privileged conversation.
 10 MR. SHEA: I'm just asking her in
 11 general.
 12 Q. (By Mr. Shea) Did he refresh your
 13 memory?
 14 MR. GRIGGS: I'll renew the
 15 objection.
 16 Q. (By Mr. Shea) With respect to
 17 Wendy Gauthier. Did he?
 18 A. Am I not answering?
 19 Q. You are answering the question.
 20 A. Excuse me?
 21 MR. GRIGGS: I really don't think
 22 you can ask her about the substance of your
 23 conversation, so I think you don't have to
 24 answer. Don't answer.

Page 21

1 MR. SHEA: You are instructing her
 2 not to answer about a general question
 3 about whether her memory was refreshed.
 4 I'm not asking about the content of the
 5 conversation.
 6 MR. GRIGGS: Okay. Go ahead.
 7 THE WITNESS: The only thing that
 8 Mr. Griggs said to me was that she was -
 9 MR. GRIGGS: You don't have to say
 10 anything I said. I'll renew the objection.
 11 Don't answer the question.
 12 Q. (By Mr. Shea) I don't want to know
 13 what was said, I just want to know if he
 14 refreshed your memory in general about Wendy
 15 Gauthier at all?
 16 MR. GRIGGS: I'll object the form
 17 of the question, too.
 18 Q. (By Mr. Shea) Yes. You may
 19 answer.
 20 A. I'm sorry, I am waiting for my
 21 attorney to stop coughing so I can answer.
 22 MR. GRIGGS: Go ahead.
 23 THE WITNESS: I'm sorry, would you
 24 repeat the question?

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7 (Pages 22 to 25)

Page 22	Page 24
<p>1 Q. (By Mr. Shea) Did Mr. Griggs 2 refresh your memory about Ms. Gauthier as a 3 result of the meeting at the Picadilly Pub 4 yesterday? 5 A. Yes, sir. 6 Q. Prior to that time, you had no 7 memory of Wendy Gauthier, correct? 8 A. Correct. 9 Q. Sitting here today, do you 10 remember anything about Wendy Gauthier other 11 than what you've already testified to? 12 A. I really don't know. 13 Q. Meaning you don't have any other 14 memory other than what you've told me that you 15 recall about Wendy Gauthier sitting here today? 16 A. That's it. 17 Q. Do you know that Wendy Gauthier was 18 terminated from SunBridge which is also known as 19 Sandalwood? 20 A. Yes. 21 Q. Do you know why she was terminated 22 or no? 23 A. No, I really don't know exactly why 24 she was terminated.</p>	<p>1 Q. Do you know what year was she was 2 terminated from SunBridge? 3 A. I don't know exactly. 4 Q. Do you know who she was terminated 5 by? 6 A. No, I do not know who terminated 7 her. 8 Q. You don't know who made the 9 decision to terminate her employment at 10 SunBridge? 11 A. No, I do not know that. 12 Q. You already said you don't know 13 exactly why she was terminated, correct? 14 A. Not the exact reason. 15 Q. When did you say you resigned? 16 A. I handed in my termination I 17 believe and it's a little vague, but I think it 18 was the end of April because I would have been 19 gone by approximately June 1st. 20 Q. So when do you think you 21 relinquished your responsibilities, at the end 22 of April? 23 A. No, I did not. My 24 responsibilities were relinquished the day I</p>
Page 23	Page 25
<p>1 Q. Were you her supervisor at the time 2 of her termination or do you know? 3 A. I guess I'm trying -- I had 4 resigned the end of May. And I would have 5 left -- I'm sorry, the end of April, I'm sorry. 6 I resigned the end of April and was leaving the 7 end of May, first of June. So by the second or 8 third week in May. 9 Q. Of what year? 10 A. 2003, 2004, I'm sorry, 2004. I was 11 not officially working in full capacity as a 12 director at that time. 13 Q. Meaning what, what were you doing 14 at that time? 15 A. I was stepping down, cleaning up 16 and passing on information. 17 Q. Who was the director of nursing at 18 the time Wendy Gauthier was terminated, do you 19 know? 20 A. I don't know when Wendy Gauthier 21 was terminated. 22 Q. Do you have any idea when she was 23 terminated? 24 A. No.</p>	<p>1 left. 2 Q. When was what day? 3 A. I don't remember exactly. It's on 4 or before or about June 1st. 5 Q. You've told me everything about 6 your memory of Wendy Gauthier, correct? 7 A. I don't believe you asked me. 8 Q. I asked you if you remember her? 9 A. I'm sorry, repeat the question. 10 Q. Have you told me everything in this 11 deposition today about your memory of Wendy 12 Gauthier? 13 A. Oh, Wendy Gauthier. I'm sorry, I 14 thought you said, when I got there. 15 Q. Sorry. 16 A. That's what I heard, I'm sorry. 17 Q. You have told me everything you 18 know about Wendy Gauthier today? 19 MR. GRIGGS: Objection to the form. 20 Q. (By Mr. Shea) Everything you 21 remember about her, right? 22 A. I have responded to your questions 23 correctly. 24 Q. So you have told me everything you</p>

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8 (Pages 26 to 29)

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1 remember about Wendy Gauthier?
 2 MR. GRIGGS: Objection to the form.
 3 THE WITNESS: I responded to your
 4 questions of what you asked about.
 5 Q. (By Mr. Shea) Is there anything
 6 else you remember about Wendy Gauthier other
 7 than what you've already told me today?
 8 A. I don't know.
 9 Q. You don't know of anything else?
 10 A. I don't recall.
 11 * Q. You don't recall anything else
 12 about Wendy Gauthier other than what you've told
 13 me today, is that fair to say?
 14 MR. GRIGGS: I'll object to the
 15 form.
 16 THE WITNESS: I guess I'm finding
 17 it very difficult.
 18 MR. SHEA: Can you read that back?
 19
 20 * (Question read)
 21
 22 Q. (By Mr. Shea) You can answer.
 23 A. The only answer I can say to you is
 24 that I have responded to any questions you've

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1 that she was pregnant. Whether she stated it or
 2 I heard it from someone else.
 3 Q. Was she pregnant? Do you know
 4 whether Ms. Gauthier was pregnant while she was
 5 employed at SunBridge or not?
 6 A. I believe she was pregnant at
 7 SunBridge.
 8 Q. Did she work there the whole time
 9 that you worked at SunBridge, Ms. Gauthier?
 10 A. I don't know because I don't know
 11 when she left.
 12 Q. Do you know when she started?
 13 A. Not exactly.
 14 Q. Do you have any idea?
 15 A. She would have had to start
 16 sometime I was employed.
 17 Q. Did you know sitting here today in
 18 what year she was employed at SunBridge?
 19 A. Exactly no, sir.
 20 Q. Do you have any idea?
 21 A. Either 2003 or 2004.
 22 Q. You are not sure?
 23 A. No, sir.
 24 Q. Do you know what her position was

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1 asked me about Wendy Gauthier.
 2 Q. That's not many question.
 3 MR. SHEA: Can you read back the
 4 question?
 5
 6 * (Question read)
 7
 8 THE WITNESS: I can say that she
 9 was a female, that she worked 11:00 to
 10 7:00, that she was married, I mean.
 11 Q. (By Mr. Shea) Do you remember what
 12 she looked like?
 13 A. Honestly, no.
 14 Q. Do you remember whether she was
 15 ever pregnant or no?
 16 A. I believe she may have been
 17 pregnant.
 18 Q. Well, do you know, do you have a
 19 memory of whether she was pregnant or not?
 20 A. I do remember something about her
 21 being pregnant.
 22 Q. What do you remember?
 23 A. All I can say is I remember and I
 24 cannot tell you whether or how it came about

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1 at SunBridge?
 2 A. She was a CNA.
 3 Q. Was she a CNA the whole time she
 4 was employed at SunBridge?
 5 A. Yes, sir.
 6 Q. Did she do a good job?
 7 A. I can't answer that honestly.
 8 Q. I'm just trying to get your best
 9 memory. Whatever your memory is that's fine.
 10 Do you know whether Ms. Gauthier
 11 was ever injured at work or no?
 12 A. I don't have a recall on that.
 13 Q. She may have, you just don't
 14 recall?
 15 A. She may have, I don't recall.
 16 Q. Do you know whether Ms. Gauthier --
 17 do you recall any conversation with Ms. Gauthier
 18 or no?
 19 A. I vaguely remember a conversation
 20 when perhaps hiring her because I usually speak
 21 to all new employees.
 22 Q. Do you remember her ever asking for
 23 any kind of light duty work?
 24 A. No, I do not remember her asking

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9 (Pages 30 to 33)

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<p>1 me.</p> <p>2 Q. The conversations you remember when</p> <p>3 she was hired, what do you remember, or</p> <p>4 conversation I think you said?</p> <p>5 A. Conversations with me and new</p> <p>6 employees. Depending on the employee in a</p> <p>7 situation would be to welcome them, to explain</p> <p>8 and reiterate policies, the importance of being</p> <p>9 on time, that's me reiterating policies. Asking</p> <p>10 them if there's any questions. And like I say,</p> <p>11 everything is individual per employee.</p> <p>12 Q. Meaning what?</p> <p>13 A. Well, meaning that there is</p> <p>14 something missing from a record that needs to</p> <p>15 be, an employment record upon hiring that needs</p> <p>16 to be complete before they can start. Maybe</p> <p>17 something to do about the schedule. Each person</p> <p>18 is an individual, so that, you know, I really</p> <p>19 couldn't tell you. Maybe it was looking for</p> <p>20 references, maybe it was looking for, like I</p> <p>21 said, it was all individual.</p> <p>22 Q. But I'm just focusing on your</p> <p>23 specific memory of speaking with Wendy Gauthier,</p> <p>24 do you have any specific memory of speaking with</p>	<p>1 SunBridge related to her performance or no?</p> <p>2 A. I have no recall.</p> <p>3 Q. Do you know whether Wendy Gauthier</p> <p>4 ever had any complications in her pregnancy that</p> <p>5 you referred to?</p> <p>6 A. I was never aware of any</p> <p>7 complications of pregnancy.</p> <p>8 Q. Are you sure you were aware of her</p> <p>9 pregnancy or no?</p> <p>10 MR. GRIGGS: Asked and answered,</p> <p>11 but go ahead and answer if, again, if you</p> <p>12 want.</p> <p>13 THE WITNESS: You know, I can't</p> <p>14 sit here and honestly say that Wendy</p> <p>15 Gauthier was pregnant. There was rumors</p> <p>16 that Wendy Gauthier was pregnant, but I do</p> <p>17 not have any validation.</p> <p>18 Q. (By Mr. Shea) Do you know who you</p> <p>19 heard the rumor from?</p> <p>20 A. No, I do not.</p> <p>21 Q. Did you ever talk to Wendy Gauthier</p> <p>22 about any attendance issues that you recall?</p> <p>23 A. I don't recall.</p> <p>24 Q. How old are you?</p>
Page 31	Page 33
<p>1 Wendy Gauthier?</p> <p>2 A. Not specific.</p> <p>3 Q. Ever?</p> <p>4 A. Ever?</p> <p>5 Q. Yes.</p> <p>6 A. Can I give you the content, no, I</p> <p>7 cannot.</p> <p>8 Q. I'm asking you if you have a</p> <p>9 specific memory of speaking with her?</p> <p>10 A. Yes, I did speak with her.</p> <p>11 Q. When did you speak with her?</p> <p>12 A. I don't know.</p> <p>13 Q. What did you talk to her about, do</p> <p>14 you know or?</p> <p>15 A. I cannot honestly answer that.</p> <p>16 Q. Again, I'm just trying to get your</p> <p>17 best memory.</p> <p>18 A. Mm-hmm.</p> <p>19 Q. You have no memory of conversation</p> <p>20 with her, correct?</p> <p>21 A. I have no memory of any content of</p> <p>22 conversation.</p> <p>23 Q. Do you know whether Wendy Gauthier</p> <p>24 ever received any kind of reprimands at</p>	<p>1 A. How old am I?</p> <p>2 Q. Yes.</p> <p>3 A. 65.</p> <p>4 Q. I want to just get a little back</p> <p>5 ground. Where did you go to school?</p> <p>6 A. What school?</p> <p>7 Q. Starting with high school?</p> <p>8 A. I went to Catholic Central High</p> <p>9 School in Troy, New York.</p> <p>10 Q. When did you graduate?</p> <p>11 A. I graduated 1959.</p> <p>12 Q. Where did you go from there?</p> <p>13 A. From there I went to Albany Medical</p> <p>14 Center School of Nursing in Albany, New York.</p> <p>15 Q. You graduated with a degree?</p> <p>16 A. I graduated with a registered nurse</p> <p>17 and received that January '63.</p> <p>18 Q. Then did you go to school beyond</p> <p>19 that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Where did you go?</p> <p>22 A. I went to nurse practitioner's</p> <p>23 school in Syracuse. I'm trying to remember, it</p> <p>24 was back in 1974. I'm trying to recall, I think</p>

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10 (Pages 34 to 37)

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<p>1 it was St. Joseph's Hospital in Syracuse, New 2 York. 3 Q. Did you graduate with some degree? 4 A. I did not graduate because we moved 5 to Indiana. 6 Q. What type of program was that? 7 A. It was a nurse clinician's program. 8 Q. Beyond that, did you go to any 9 other higher level of education? 10 A. Yes, sir. 11 Q. Where was that? 12 A. In New York state I went to Suny 13 Utica/Rome for bachelor's. 14 Q. Was the nursing degree a 15 bachelor's? 16 A. It was in health. 17 Q. But the nursing degree in 1963, was 18 that a four year bachelor's? 19 A. It was a three-year diploma. 20 Q. Then this one that you are talking 21 about at Suny, that's a four-year bachelor's 22 degree? 23 A. Yes. 24 Q. What was that in?</p>	<p>1 Q. Any other higher level of education 2 that you had? 3 A. No formal school, no. 4 Q. Why is it that when you left 5 SunBridge you went back to being a registered 6 nurse? 7 A. I don't believe I said that. 8 Q. I think you said that. When you 9 left SunBridge, are you a nurse now? 10 A. I am a nurse now. 11 Q. Obviously you are educated as a 12 nurse. 13 A. Yes, sir. 14 Q. And you have been for some time. 15 Were you acting as a nurse at SunBridge? 16 A. Yes, sir. 17 Q. What was your title at SunBridge, 18 director of nursing? 19 A. I was director of nursing. 20 Q. The whole time? 21 A. Yes, sir. 22 Q. Can you tell me what job 23 responsibility you had in that role at 24 SunBridge?</p>
Page 35	Page 37
<p>1 A. Health systems management. 2 Q. Did you graduate? 3 A. Yes, sir. 4 Q. In what year was that? 5 A. I can't exactly remember. 6 Q. Beyond that, did you go to school? 7 A. Yes, sir. 8 Q. Where did you go? 9 A. Suny Binghamton. 10 Q. What degree were you pursuing 11 there? 12 A. Master's. 13 Q. Did you graduate? 14 A. Yes, sir. 15 Q. What year? 16 A. Can't recall. 17 Q. Do you have any idea? 18 A. 1988, 1990, somewhere around there. 19 Q. Prior to that other degree, prior 20 to the four-year degree at Suny, when do you 21 think you graduated? 22 A. There was about two or three years. 23 Q. Gap between the two? 24 A. Yes, sir.</p>	<p>1 A. I was responsible for the overall 2 care of all the residents, employees as far as 3 assuring that there was adequate staffing, that 4 the employees that were hired were appropriate, 5 as per the job title. 6 Q. Were you in charge of enforcing any 7 attendance policies there that you know of? 8 A. Yes, sir. 9 Q. Which attendance policies were you 10 enforcing when you were employed at SunBridge? 11 A. Which? 12 Q. Yes. 13 A. Attendance policies? 14 Q. Yes. 15 A. It would be all attendance 16 policies. 17 Q. Do you recall what the attendance 18 policies were? 19 A. I don't understand your question, 20 if you'd like to clarify that, sir. 21 Q. Sure. Whenever you have a question 22 about one of my questions, feel free to ask me 23 to rephrase it or explain it. Otherwise, can I 24 assume you understand the question?</p>

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11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 A. Okay.</p> <p>2 Q. When you were employed at</p> <p>3 SunBridge, you said you were involved in</p> <p>4 enforcing attendance policies and my question</p> <p>5 was do you recall what those attendance policies</p> <p>6 were that you enforced?</p> <p>7 What were the attendance policies</p> <p>8 at SunBridge in other words?</p> <p>9 A. The attendance policies at</p> <p>10 SunBridge is that employees were expected to</p> <p>11 show up for their work schedule and work their</p> <p>12 work schedule as assigned.</p> <p>13 Q. Is that your best memory of what</p> <p>14 the attendance policies were at SunBridge or do</p> <p>15 you recall any more detail about the attendance</p> <p>16 policies other than what you've just testified</p> <p>17 to?</p> <p>18 MR. GRIGGS: Objection to the form.</p> <p>19 Go ahead and answer.</p> <p>20 THE WITNESS: Specifically, no.</p> <p>21 Other than I'm trying to think. They would</p> <p>22 be expected I believe and I don't know</p> <p>23 exactly because of other places, if you</p> <p>24 cannot attend or be at your scheduled</p>	<p style="text-align: right;">Page 40</p> <p>1 A. In all honesty, I cannot recall her</p> <p>2 personally, but if she was there at that time,</p> <p>3 she work under me.</p> <p>4 Q. Was Wendy Gauthier a good employee</p> <p>5 or do you know?</p> <p>6 A. I cannot honestly answer that.</p> <p>7 Q. Did she have any performance</p> <p>8 problems or do you know?</p> <p>9 A. I don't recall.</p> <p>10 Q. If she had performance issues,</p> <p>11 would you be the one to reprimand her if a</p> <p>12 reprimand was in order such as a warning?</p> <p>13 A. If there were a warning and I was</p> <p>14 there, yes, I would be involved in that.</p> <p>15 Q. How would you be involved, would</p> <p>16 you be the one who decides to issue the warning</p> <p>17 or not?</p> <p>18 A. Please repeat that one more time?</p> <p>19 Q. Did you issue warnings to CNAs?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Did you issue verbal warnings?</p> <p>22 A. Yes.</p> <p>23 Q. Did you issue written warnings?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 employment at that date, you would have to</p> <p>2 call at least four hours prior to your</p> <p>3 schedule time. Such that if someone was</p> <p>4 going to work at 3:00 in the afternoon,</p> <p>5 they should call at 11:00 to allow us time</p> <p>6 to try to cover your shift. That's one</p> <p>7 specific policy.</p> <p>8 Q. (By Mr. Shea) I'll get back to</p> <p>9 that in a minute.</p> <p>10 Over what time period did you work</p> <p>11 at SunBridge?</p> <p>12 A. I believe I started on or about</p> <p>13 August 21, 2003 through the end of May of 2004.</p> <p>14 Q. Did you have Ht R functions in your</p> <p>15 role as director of nursing?</p> <p>16 A. I'm sorry?</p> <p>17 Q. He Rs function, human resource</p> <p>18 function.</p> <p>19 A. The only human resource function I</p> <p>20 would have is as it pertains to the nursing</p> <p>21 department.</p> <p>22 Q. Do you recall whether Wendy</p> <p>23 Gauthier worked under your supervision in the</p> <p>24 nursing department or not?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Did you terminate CNAs or no?</p> <p>2 A. At Sandalwood?</p> <p>3 Q. Yes.</p> <p>4 A. I may have, I remember terminating</p> <p>5 one CNA.</p> <p>6 Q. Who was that?</p> <p>7 A. I don't recall the person's name.</p> <p>8 Q. It wasn't Wendy Gauthier?</p> <p>9 A. It was not Wendy Gauthier.</p> <p>10 Q. Do you know why you terminated this</p> <p>11 employee?</p> <p>12 A. I don't recall the specific</p> <p>13 circumstances.</p> <p>14 Q. Do you recall them generally?</p> <p>15 A. I cannot honestly answer that.</p> <p>16 Q. Again, just your best memory.</p> <p>17 Do you recall reprimanding or</p> <p>18 warning or terminating any employee for</p> <p>19 attendance issues or no?</p> <p>20 A. Are we specifically talking at</p> <p>21 Sandalwood?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, I remember terminating.</p> <p>24 Q. Employees for attendance issues?</p>

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12 (Pages 42 to 45)

Page 42	Page 44
<p>1 A. Yes.</p> <p>2 Q. But not CNAs?</p> <p>3 A. I'm sorry?</p> <p>4 Q. Who were these employees?</p> <p>5 A. Well, a CNA is an employee.</p> <p>6 Q. Well, I asked you if you remembered</p> <p>7 terminating a CNA?</p> <p>8 A. And I said yes.</p> <p>9 Q. Yes, one, but you weren't sure of</p> <p>10 the reason.</p> <p>11 A. Correct.</p> <p>12 Q. Does that still hold true?</p> <p>13 A. Yes, sir.</p> <p>14 Q. When I asked you about whether you</p> <p>15 terminated any employees or reprimanded any</p> <p>16 employees for attendance issues, does the same</p> <p>17 answer hold true, you don't remember?</p> <p>18 A. I guess I'm confused.</p> <p>19 Q. Do you remember terminating any</p> <p>20 employees at Sandalwood, which we agree that we</p> <p>21 are referring to as SunBridge interchangeably,</p> <p>22 right?</p> <p>23 A. Okay. I can remember terminating</p> <p>24 and unsure of the situation where an employee</p>	<p>1 Q. Do you remember any employees, CNAs</p> <p>2 at SunBridge or Sandalwood again using those</p> <p>3 terms interchangeably throughout this deposition</p> <p>4 that you reprimanded in any way for attendance</p> <p>5 issues?</p> <p>6 A. I remember reprimanding, who the</p> <p>7 employees are, I don't recall by name.</p> <p>8 Q. Was anyone else involved with you</p> <p>9 in those reprimands?</p> <p>10 A. At times.</p> <p>11 Q. Who was that?</p> <p>12 A. My administrator.</p> <p>13 Q. Who was that?</p> <p>14 A. Mr. Copper, Stephen Copper.</p> <p>15 Q. What was his involvement?</p> <p>16 A. His involvement?</p> <p>17 Q. Yes.</p> <p>18 A. Two of us together sitting down and</p> <p>19 talking with an employee.</p> <p>20 Q. Who would make the decision to</p> <p>21 reprimand an employee for attendance issues</p> <p>22 during the time that you were at Sandalwood?</p> <p>23 Who would be responsible?</p> <p>24 A. It would always be myself and the</p>
Page 43	Page 45
<p>1 left and never showed up again. So if it's</p> <p>2 terminating, it's completing the paperwork not</p> <p>3 being able to reach an employee.</p> <p>4 Q. Who was that?</p> <p>5 A. I can't recall the person's name.</p> <p>6 Q. Is that the one you were referring</p> <p>7 to earlier?</p> <p>8 A. No, sir.</p> <p>9 Q. You did you terminate more than one</p> <p>10 person?</p> <p>11 A. Yes.</p> <p>12 Q. How many did you terminate?</p> <p>13 A. I can't recall.</p> <p>14 Q. You said earlier it was one and</p> <p>15 then --</p> <p>16 A. There was one that I was very</p> <p>17 specific about, yes.</p> <p>18 Q. Do you have any idea how many you</p> <p>19 terminated?</p> <p>20 A. No, sir.</p> <p>21 Q. Could it be more than 10?</p> <p>22 A. I don't think so.</p> <p>23 Q. Could it be more than five?</p> <p>24 A. I don't know.</p>	<p>1 administrator.</p> <p>2 Q. Who was the administrator who you</p> <p>3 are talking about at the time you were employed</p> <p>4 at Sandalwood?</p> <p>5 A. At first it was Administrator</p> <p>6 Laurie Solomon. Then I had a couple interim</p> <p>7 administrators. And then I had Steve Copper.</p> <p>8 Q. Whenever you terminated or</p> <p>9 reprimanded an employee, it would be Steve</p> <p>10 Copper that would assist you?</p> <p>11 A. Not always.</p> <p>12 Q. Or one of the other individuals you</p> <p>13 just mentioned, correct?</p> <p>14 A. They were usually involved in the</p> <p>15 process.</p> <p>16 Q. Do you recall any employee</p> <p>17 committing a no call/no show at Sandalwood or</p> <p>18 not?</p> <p>19 A. I'm trying to think back- I know</p> <p>20 there were employees, but I can't remember who</p> <p>21 or why or how.</p> <p>22 Q. Was there any kind of a written</p> <p>23 policy at Sandalwood regarding no call/no shows?</p> <p>24 A. Yes.</p>

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13 (Pages 46 to 49)

Page 46	Page 48
<p>1 Q. What was that policy, do you know?</p> <p>2 A. The policy stated that they could</p> <p>3 be, I'm trying to think the correct terminology,</p> <p>4 enforce certain policy up to and including</p> <p>5 termination.</p> <p>6 Q. Was that in writing or do you know?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Is that your best memory of the no</p> <p>9 call/no show policy that you think was in</p> <p>10 writing?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Yes?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Can you remember anything more</p> <p>15 specifically about the no call/no show policy</p> <p>16 that was in writing when you were at Sandalwood</p> <p>17 other than what you've just said?</p> <p>18 A. No, sir.</p> <p>19 Q. Was an employee allowed of number</p> <p>20 of no call/no shows before certain action would</p> <p>21 be taken?</p> <p>22 A. I believe that all employees were</p> <p>23 treated per individual.</p> <p>24 Q. Per what, I'm sorry, I'm not sure</p>	<p>1 on their schedule, they could do that, they</p> <p>2 could switch with other CNAs as long as they had</p> <p>3 coverage?</p> <p>4 A. No, sir.</p> <p>5 Q. That's not correct?</p> <p>6 A. No, sir.</p> <p>7 Q. If a CNA wanted to move a date</p> <p>8 around on work schedule, they couldn't do that?</p> <p>9 A. Not automatically.</p> <p>10 Q. What would they have to do to do</p> <p>11 that?</p> <p>12 A. They would have to get permission</p> <p>13 either from myself and/or the person who did the</p> <p>14 scheduling who would confirm with me to approve</p> <p>15 it.</p> <p>16 Q. They would make that request</p> <p>17 verbally, correct?</p> <p>18 A. There should be something in</p> <p>19 writing that I recall.</p> <p>20 Q. Not by the CNA moving the time?</p> <p>21 A. Yes, sir. Usually there was a</p> <p>22 contractual agreement between the two CNAs which</p> <p>23 was then approved or disapproved.</p> <p>24 Q. Tell me about that process. What</p>
Page 47	Page 49
<p>1 what you said?</p> <p>2 A. Well, if an employee was a no</p> <p>3 call/no show and they were in an accident and</p> <p>4 they couldn't call, then obviously I wouldn't</p> <p>5 necessarily enforce the policy.</p> <p>6 Q. My question was, was there a</p> <p>7 certain number of no call/no shows --</p> <p>8 A. No, there was not.</p> <p>9 Q. You have to let me finish my</p> <p>10 question.</p> <p>11 Under the policy that you just</p> <p>12 described at Sandalwood while you were there,</p> <p>13 were there a number of no call/no show incidents</p> <p>14 that had to take place before a reprimand</p> <p>15 occurred?</p> <p>16 A. I don't recall if there was a</p> <p>17 specific number.</p> <p>18 Q. Was there a certain number of no</p> <p>19 call/no shows that had to take place or that</p> <p>20 could lead to a termination of employment, do</p> <p>21 you know?</p> <p>22 A. I do not know.</p> <p>23 Q. If an employee, a CNA wanted to</p> <p>24 reschedule their work time or move a day around</p>	<p>1 would a CNA have to submit in writing to move</p> <p>2 their schedule to shift a day or some time?</p> <p>3 A. They would state specifically that</p> <p>4 the other person was going to work for them on a</p> <p>5 particular date and shift and/or they could be</p> <p>6 switching a date and shift and both of them were</p> <p>7 signed and agreed upon.</p> <p>8 Q. What would they sign is my</p> <p>9 question?</p> <p>10 A. The form that they are writing.</p> <p>11 Q. What form?</p> <p>12 A. Usually a simple form that says so</p> <p>13 and so agrees to work for so and so on such and</p> <p>14 such a date or they are switching this date and</p> <p>15 that person is working that specific date and</p> <p>16 then we both sign and date it.</p> <p>17 Q. Is it your testimony that every CNA</p> <p>18 had to get approval, make a request in writing</p> <p>19 to change time?</p> <p>20 A. Unless there was not time to put it</p> <p>21 in writing, but they all had to get.</p> <p>22 Q. It could be verbal as well, a</p> <p>23 verbal request?</p> <p>24 A. Yes, it could be, but that would be</p>

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14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 unusual circumstances.</p> <p>2 Q. So tell me about this form, what</p> <p>3 did the form say that you say the CNAs fill out?</p> <p>4 A. I don't know exact verbage on the</p> <p>5 form, how many lines there are or anything other</p> <p>6 than the agreement.</p> <p>7 Q. Is there a name for the form?</p> <p>8 A. I don't know if there is a name.</p> <p>9 Q. Was this form used routinely the</p> <p>10 whole time that you were there?</p> <p>11 A. I believe so.</p> <p>12 Q. Are you sure?</p> <p>13 A. No, I'm not.</p> <p>14 Q. So if I'm a CNA, I have to fill out</p> <p>15 a form and let's say this was the form, is it a</p> <p>16 one-page form?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And so I fill the form out and who</p> <p>19 do I give it to?</p> <p>20 A. The scheduler usually or myself</p> <p>21 directly.</p> <p>22 Q. You could give it to either one?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Yes?</p>	<p style="text-align: right;">Page 52</p> <p>1 vacation and they gave the scheduler three weeks</p> <p>2 notice or two weeks notice then that was put in</p> <p>3 writing as a request. Therefore, that would be</p> <p>4 a change in the schedule.</p> <p>5 If someone needed a doctors day off</p> <p>6 and wanted to use a personal day, that would be</p> <p>7 a change in the schedule and they would notify</p> <p>8 the scheduler and then the scheduler would then</p> <p>9 work that out.</p> <p>10 Q. I understand that. That's been my</p> <p>11 understanding throughout.</p> <p>12 The scheduler would put it in</p> <p>13 writing, but not the CNA?</p> <p>14 A. The CNA would.</p> <p>15 Q. If I go back to 2003 and 2004, I'm</p> <p>16 going to find forms from all the CNAs on a</p> <p>17 regular basis whenever they change their times,</p> <p>18 I'm going to find written forms from them that</p> <p>19 were submitted by the CNAs -</p> <p>20 A. Mm-hmm.</p> <p>21 Q. - to change their time in writing?</p> <p>22 MR. GRIGGS: Objection to the form.</p> <p>23 THE WITNESS: No, I do not believe</p> <p>24 they kept all the forms in the book. What</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Yes, sir.</p> <p>2 Q. Who is the scheduler? Is the</p> <p>3 scheduler a nurse?</p> <p>4 A. No, sir.</p> <p>5 Q. What does the scheduler do with the</p> <p>6 form?</p> <p>7 A. What does she do with the form?</p> <p>8 Q. Yes.</p> <p>9 A. She would look at it, look at the</p> <p>10 dates and then check with me and tell me whether</p> <p>11 we felt we could do it or not do it.</p> <p>12 Q. Was there a written policy that</p> <p>13 says a CNA has to change their time in writing,</p> <p>14 make a written request at Sandalwood?</p> <p>15 A. Excuse me, sir, that's very vague.</p> <p>16 Q. Was there a written policy at</p> <p>17 Sandalwood that required CNAs to make a request</p> <p>18 that changed their time in writing?</p> <p>19 A. Yes, usually, yes.</p> <p>20 Q. Usually?</p> <p>21 A. From what I can recall, they put it</p> <p>22 in writing and there was a book and/or a form</p> <p>23 that they kept at the scheduler's office. Such</p> <p>24 as if somebody wanted three days off for</p>	<p style="text-align: right;">Page 53</p> <p>1 was kept was the schedule itself.</p> <p>2 Q. (By Mr. Shea) What did they do</p> <p>3 with the forms?</p> <p>4 A. I don't know.</p> <p>5 Q. So when you say the schedule</p> <p>6 itself, it's the scheduler's notes is what you</p> <p>7 are talking about?</p> <p>8 A. Scheduler's notes.</p> <p>9 Q. We're going to go through this as</p> <p>10 thoroughly as we can to understand it.</p> <p>11 The scheduler makes notes on the</p> <p>12 sheet about any changes on the schedule, right?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Yes?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What are those sheets called?</p> <p>17 A. You know, it's her working format</p> <p>18 that she uses on a daily basis to make</p> <p>19 corrections to the schedule or to try to fill in</p> <p>20 the schedule.</p> <p>21 MR. GRIGGS: Can I take a rest</p> <p>22 room break?</p> <p>23 MR. SHEA: Sure.</p> <p>24</p>

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15 (Pages 54 to 57)

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<p>1 (A recess was taken)</p> <p>2</p> <p>3 MR. SHEA: Back on the record.</p> <p>4 Q. (By Mr. Shea) Was there a written</p> <p>5 policy of SunBridge or Sandalwood that required</p> <p>6 C NAs to put in writing these requests for</p> <p>7 changing a schedule?</p> <p>8 A. I don't honestly recall that.</p> <p>9 Q. Was there a verbal policy?</p> <p>10 A. I know that it was a policy.</p> <p>11 Q. It was a verbal policy, I assume?</p> <p>12 A. I can't tell you whether it was</p> <p>13 verbal or written.</p> <p>14 Q. So would the other CNAs submit</p> <p>15 something in writing as well, the one taking</p> <p>16 over?</p> <p>17 A. The one form, the one separate</p> <p>18 paper would be completed.</p> <p>19 Q. Would it be signed by the CNAs or</p> <p>20 do you know?</p> <p>21 A. They were signed by the CNAs. If it</p> <p>22 required a shift change between two CNAs.</p> <p>23 Q. Is it your testimony that that</p> <p>24 policy was consistently applied to all CNAs the</p>	<p>1 what I'm saying?</p> <p>2 A. You're saying if one employee</p> <p>3 came --</p> <p>4 Q. To the scheduler?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. Or to you?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. And said, you know, I'm not going</p> <p>9 to come in on that date, but I have coverage</p> <p>10 from another CNA and the scheduler makes a note</p> <p>11 of that on the schedule form, is that</p> <p>12 appropriate?</p> <p>13 A. As long as it's agreed upon and</p> <p>14 approved through administration.</p> <p>15 Q. That could be approved through the</p> <p>16 scheduler or yourself?</p> <p>17 A. Through myself primarily.</p> <p>18 Q. Or the scheduler?</p> <p>19 A. The scheduler would contact me</p> <p>20 reason being I'm not going to put somebody into</p> <p>21 overtime.</p> <p>22 Q. Is it your testimony that while you</p> <p>23 were employed at Sandalwood, you approved and</p> <p>24 reviewed and approved every single schedule</p>
Page 55	Page 57
<p>1 entire time you were there?</p> <p>2 A. Primarily in writing yes, sir,</p> <p>3 there may have been a few verbal instances.</p> <p>4 Q. So where are those sheets?</p> <p>5 A. I do not know.</p> <p>6 Q. Did they have them when you left?</p> <p>7 A. I can't honestly say they were</p> <p>8 there when I left.</p> <p>9 Q. You just told me they didn't keep</p> <p>10 those, right?</p> <p>11 A. Yes, do they have them. You didn't</p> <p>12 say whether they kept were.</p> <p>13 Q. Did they keep those forms?</p> <p>14 A. I don't know.</p> <p>15 Q. Did they keep them while you were</p> <p>16 working there? Did SunBridge management keep</p> <p>17 those forms?</p> <p>18 A. I don't know.</p> <p>19 Q. If an employee changed their</p> <p>20 schedule verbally, is there any reprimand for</p> <p>21 that, was that inappropriate?</p> <p>22 A. No, sir.</p> <p>23 MR. GRIGGS: Form.</p> <p>24 Q. (By Mr. Shea) Do you understand</p>	<p>1 change?</p> <p>2 A. I cannot say I approved every</p> <p>3 single.</p> <p>4 Q. Could the scheduler have the</p> <p>5 authority to change the time on a schedule or a</p> <p>6 CNA who has a verbal agreement with another CNA</p> <p>7 to change the schedule?</p> <p>8 A. Depending on, everything was</p> <p>9 considered individual.</p> <p>10 Q. What does that mean, so that could</p> <p>11 happen?</p> <p>12 A. It could happen if it were a simple</p> <p>13 change and if I was not there, then perhaps she</p> <p>14 would have called the charge nurse -- sorry,</p> <p>15 Steve and/or administrator just, oh, by the way,</p> <p>16 this is happening. And it's okay because I</p> <p>17 checked the schedule, it doesn't put anybody</p> <p>18 into overtime and it's agreed upon.</p> <p>19 Q. It wasn't unusual for a CNA to</p> <p>20 change the schedule verbally?</p> <p>21 A. I can't say whether it was usual or</p> <p>22 unusual, it may have occurred.</p> <p>23 Q. Do you know who Lisa Franks is,</p> <p>24 does that name ring a bell?</p>

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16 (Pages 58 to 61)

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1 A. She was a CNA.
 2 Q. Do you remember her?
 3 A. I remember she worked 11:00 to
 4 7:00.
 5 Q. Do you remember her?
 6 A. I couldn't identify her in a line
 7 up.
 8 Q. Do you know whether she had a no
 9 call/no show at Sandalwood?
 10 A. I don't recall.
 11 Q. Do you recall any other employee
 12 who may have had a no call/no show at
 13 Sandalwood?
 14 A. Off the top of my head, no.
 15 Q. How many no call/no shows do you
 16 get as a CNA and Sandalwood before you are
 17 terminated?
 18 A. I don't know.
 19 Q. Do you know whether Lisa Franks and
 20 Wendy Gauthier ever had an agreement to change
 21 their schedules as CNAs at Sandalwood?
 22 A. I couldn't recall that.
 23 MR. SHEA: I'm just going to take
 24 one minute and I think we're done.

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1
 2 (A recess was taken)
 3
 4 MR. SHEA: Back on the record.
 5 Q. (By Mr. Shea) Have you ever been
 6 reprimanded or terminated from a job?
 7 A. No, I've never been terminated from
 8 a job.
 9 Q. Have you ever been reprimanded?
 10 A. Reprimanded, I believe someone may
 11 have said I want you to do it this way and not
 12 that way or I can't really recall. But I've
 13 never been terminated from a position.
 14 Q. Who may have said don't do it this
 15 way and do it that way, which employer?
 16 A. Back in early '60s I worked in the
 17 operating room and I wore sandals down to lunch
 18 and they said I was not professional to wear
 19 sandals. We had to change our shoes from
 20 conductive to nonconductive shoes.
 21 Q. Where was this?
 22 A. Child's Hospital in Albany back in
 23 1965.
 24 Q. Did you ever receive a verbal or

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1 written warning at any employer?
 2 A. I received a verbal warning about
 3 being late and that was it.
 4 Q. Where was that?
 5 A. Child's Hospital.
 6 Q. Where was that located?
 7 A. Albany, New York.
 8 Q. Is that still there?
 9 A. I believe it is.
 10 Q. What street is that on?
 11 A. You know, I really don't know.
 12 Q. Is that downtown Albany?
 13 A. It's like up around, what the
 14 exact, could be Holland Avenue, it could have
 15 been some other street. I really don't know.
 16 Albany Child's Hospital, the VA and St. Peter
 17 are all within three or four blocks of each
 18 other. The exact street, I don't know.
 19 Q. Why did you resign your employment
 20 at Sandalwood?
 21 A. Because my husband and I were
 22 moving to Florida.
 23 Q. You moved to Florida?
 24 A. Yes, sir.

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1 Q. Now you are moving back or you've
 2 moved back?
 3 A. Yes, sir.
 4 Q. You are selling your house in
 5 Florida?
 6 A. Yes, sir.
 7 Q. Did you ever re-apply to
 8 Sandalwood?
 9 A. No, sir.
 10 Q. Or any SunBridge entity?
 11 A. No, sir.
 12 Q. Why not?
 13 A. I didn't choose to.
 14 Q. In your entire employment history,
 15 did anyone ever make any complaints about you?
 16 A. Not that I can recall.
 17 Q. You were never a party to a
 18 lawsuit?
 19 A. A lawsuit, no, sir.
 20 Q. Did you work in Florida?
 21 A. My husband and I opened, actually
 22 took over a small assisted living facility.
 23 Q. You were employed there?
 24 A. We were self-employed.

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17 (Pages 62 to 65)

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<p>1 Q. What happened with that?</p> <p>2 A. We sold it.</p> <p>3 Q. Who did you sell it to?</p> <p>4 A. I think her name was Barbara</p> <p>5 Surette, S-U, I don't know how to spell her</p> <p>6 name correctly.</p> <p>7 Q. Why did you sell it?</p> <p>8 A. Because I became lonely for my</p> <p>9 family and my grandchildren.</p> <p>10 Q. Back here in Massachusetts?</p> <p>11 A. Yes, sir, we came back for a visit</p> <p>12 and I started feeling nostalgic, whatever you</p> <p>13 want to say. I found that the separation, I was</p> <p>14 wasn't able to adjust to that separation.</p> <p>15 Q. What did you do at the assisted</p> <p>16 living facility, what's the name of it?</p> <p>17 A. It was called Cozy Coachman.</p> <p>18 Q. Is it still there?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What did you do there?</p> <p>21 A. We took care of the residents, we</p> <p>22 had staff. I did PR, went to visit hospitals,</p> <p>23 other nursing homes. However one does to look</p> <p>24 for new residents, most of them were word of</p>	<p>1 away from the hospital.</p> <p>2 Q. Like a walk-in facility?</p> <p>3 A. Sort of a walk in, yes.</p> <p>4 Q. What's the name of that?</p> <p>5 A. I don't remember. It was in</p> <p>6 upstate New York, Steventown.</p> <p>7 Q. What's the next place you recall</p> <p>8 working at?</p> <p>9 A. For the next 13 years or so I</p> <p>10 worked for my husband who is a physician and I</p> <p>11 was a physician's assistant.</p> <p>12 Q. Where was that, do you remember?</p> <p>13 A. Canajoharie, New York.</p> <p>14 Q. What was the name of the place?</p> <p>15 A. I don't know if it really had a</p> <p>16 name other than the physician's names.</p> <p>17 Q. What was the physician's name?</p> <p>18 A. Dr. Paul Rockwell.</p> <p>19 Q. Then where did you work?</p> <p>20 A. I worked as an administrator for</p> <p>21 Montgomery County Nursing Home. I went through</p> <p>22 a divorce. Relocated with my youngest child to</p> <p>23 Cambridge, New York. And I worked for</p> <p>24 Presbyterian and I was the administrator for</p>
Page 63	Page 65
<p>1 mouth. Set up their plan of care. Make sure</p> <p>2 there was food, clothing, the whole continuum of</p> <p>3 care of the assisted living.</p> <p>4 Q. From high school to now, do you</p> <p>5 remember the places you worked?</p> <p>6 A. Probably.</p> <p>7 Q. Can you tell me what they are and</p> <p>8 when you worked there?</p> <p>9 A. Oh, God, no. I'm sorry, sir, it's</p> <p>10 45 years of.</p> <p>11 Q. Employment?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Can you give me the ones you do</p> <p>14 recall off the top?</p> <p>15 A. I worked at Albany Med when I first</p> <p>16 graduated. Then I worked at Child's Hospital.</p> <p>17 Then we moved to California. I worked at</p> <p>18 Glendora Community Hospital in Glendora in the</p> <p>19 operating room. Moved back to New York.</p> <p>20 Q. Just your best memory.</p> <p>21 A. Leonard Hospital is no longer</p> <p>22 there. Then I worked in a free-standing surgery</p> <p>23 center, it's like an on-call emergency</p> <p>24 free-standing building in a remote community</p>	<p>1 Presbyterian Home for 11 or 12 years. I worked</p> <p>2 at Coleman House.</p> <p>3 Q. What's that?</p> <p>4 A. It's a nursing home in</p> <p>5 Northborough, I was the director of nursing</p> <p>6 there.</p> <p>7 Q. Northborough?</p> <p>8 A. Massachusetts.</p> <p>9 Q. That was sometime in the '90s?</p> <p>10 A. Yeah, I want to say '96, '98. I'm</p> <p>11 sorry.</p> <p>12 Q. Just your best memory?</p> <p>13 A. I wasn't thinking about.</p> <p>14 Q. Your entire work history.</p> <p>15 A. Clark Manor 2000 to 2002 somewhere</p> <p>16 around there, February of 2002. I worked at</p> <p>17 Havens Health Care in Connecticut and then went</p> <p>18 to Sandalwood.</p> <p>19 Q. That's what I was looking for just</p> <p>20 a brief summary.</p> <p>21 A. Okay.</p> <p>22 Q. Where is Haven Health Care located?</p> <p>23 A. Danielson, I think it was another.</p> <p>24 Q. Sorry, what?</p>

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18 (Pages 66 to 69)

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<p>1 A. There they went through a name 2 change, so I don't know if could have been 3 something else. 4 Q. But it's in Danielson? 5 A. Yes, sir. 6 Q. What did you do for them? 7 A. I started off as the assistant 8 director and then assumed the role director when 9 the director left. 10 Q. You didn't receive any warnings or 11 reprimands at Sandalwood, correct? 12 A. No, sir. 13 Q. Progressive discipline policy at 14 Sandalwood, was there one? 15 A. Yes. 16 Q. What was it? 17 A. I can't tell you off the top of my 18 head exactly. 19 Q. Do you know whether there were a 20 certain number of tardies or absenteeisms that a 21 CNA would have to reach before they would be 22 reprimanded or disciplined? 23 A. I do not honestly know specifics. 24 MR. SHEA: I don't have anything</p>	<p>1 THE WITNESS: Variety of reasons. 2 I believe some of it being it was difficult 3 to get staffing sometimes, so sometimes you 4 try to make exceptions and also in doing 5 so, you would help try to educate the 6 employee and try to work with them. 7 Q. (By Mr. Griggs) So sometimes you 8 had no choice but to keep somebody? 9 MR. SHEA: Objection. 10 THE WITNESS: Yes. 11 Q. (By Mr. Griggs) Did you find it a 12 challenge to find CNAs to staff shifts at 13 Sandalwood? 14 MR. SHEA: Objection. 15 THE WITNESS: Very much so. 16 Q. (By Mr. Griggs) So you were saying 17 it was hard to find CNAs? 18 MR. SHEA: Objection. 19 THE WITNESS: Yes. 20 Q. (By Mr. Griggs) Did you find it 21 also hard to find nurses as well? 22 MR. SHEA: Objection. 23 THE WITNESS: Yes, sir. 24 MR. GRIGGS: No further questions.</p>
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<p>1 further. 2 3 4 EXAMINATION BY MR. GRIGGS: 5 6 Q. With regard to no call/no shows, 7 what was the SunBridge policy in that regard? 8 MR. SHEA: Objection. You may 9 answer. 10 THE WITNESS: There's one 11 policy -- I'm sorry, one no call/no show. 12 Q. (By Mr. Griggs) One no call/no 13 show would result in what? 14 MR. SHEA: Objection. 15 Q. (By Mr. Griggs) I'm asking you 16 what the policy is? 17 A. I believe it's up to and including 18 termination. 19 Q. Did you always terminate somebody 20 after the first no call/no show? 21 MR. SHEA: Objection. 22 THE WITNESS: No, sir. 23 Q. (By Mr. Griggs) Why would you not? 24 MR. SHEA: Objection.</p>	<p>1 MR. SHEA: I have a couple of quick 2 ones based on what he just said. 3 4 5 FURTHER EXAMINATION BY MR. SHEA: 6 7 Q. The no call/no show policy at 8 Sandalwood, do you recall, do you have a 9 specific recollection of that policy today? 10 A. The specific recollection I had was 11 that they can terminated after one no call/no 12 show. I think they said up to and including 13 termination. 14 Q. Do you know whether Wendy Gauthier 15 had a no call/no show? 16 A. I can't be very specific with it, 17 no. 18 Q. Do you know whether she had any 19 absenteeism issues or tardiness issues? 20 A. I believe there's some absenteeism. 21 Q. You don't know whether she had a no 22 call/no show? 23 A. I don't know, no, I don't. 24 Q. You said there are certain</p>

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<p style="text-align: right;">Page 70</p> <p>1 circumstance where more than one no call/no show 2 may not lead to termination? 3 A. That's so. 4 Q. Is that correct? 5 A. That's so. 6 Q. What are those circumstances? 7 A. Sometimes depending on the person 8 and the circumstances of the no call/no show, 9 you would make -- like I said, if somebody were 10 in an accident or they depended on their 11 neighbor and the neighbor didn't show up and 12 they didn't have whatever. I mean, I can't sit 13 here and give you each and every personal 14 circumstance, but sometimes we did. 15 Also, in order to staff because I 16 really had to maintain staffing and if I didn't, 17 then I on several occasions because of no 18 call/no shows with CNAs, I've worked 3:00 to 19 11:00, I've worked nights and days and evenings 20 as a nurse because of staffing issues. Because 21 regardless of whether that person shows or 22 doesn't show, I have to as a director maintain 23 certain staffing hours. 24 Q. The circumstance under which more</p>	<p style="text-align: right;">Page 72</p> <p>1 question. 2 A. Not that I recall. 3 Q. So she may have and you just don't 4 recall? 5 MR. GRIGGS: Objection to the form. 6 THE WITNESS: I'm sorry? 7 Q. (By Mr. Shea) She may have been 8 ill related to her pregnancy and you just don't 9 recall, is that fair to say? 10 A. I don't recall. I don't recall her 11 being ill because of her pregnancy. 12 Q. Do you know whether, in fact, she 13 was ill and not related to her pregnancy? 14 A. No, I don't. 15 Q. You don't recall having any 16 conversation with her about her pregnancy? 17 A. I don't recall. 18 Q. You don't recall her being injured 19 at work, correct? 20 A. I don't recall her being injured at 21 work. 22 Q. Do you know whether, in fact, she 23 was injured at work? 24 A. I don't know that.</p>
<p style="text-align: right;">Page 71</p> <p>1 than one no call/no show may be acceptable, 2 would those include medical reasons? 3 A. You know, I can't tell you 4 specifically what they were. 5 Q. If someone had a no call/no show 6 because they were sick, would that be 7 acceptable? 8 MR. GRIGGS: Objection to the form. 9 Q. (By Mr. Shea) Say they were 10 unexpectedly sick? 11 A. I believe I addressed that. If 12 they were in the hospital and -- if they were in 13 a position where they could not, if they were in 14 an accident and they couldn't get to a phone. 15 Q. I'm not talking about an accident, 16 I'm asking you about being ill. 17 A. That's an individual situation that 18 I can't sit here and answer honestly. 19 Q. Do you know whether Wendy Gauthier 20 was ill related to her pregnancy? 21 A. Not that I recall. 22 Q. Do you know whether she was or not? 23 A. Pregnant or ill? 24 Q. Ill related to her pregnancy was my</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Do you recall asking Wendy Gauthier 2 for any medical notes at any time? 3 A. Asking for any? 4 Q. Medical notes. 5 A. Off the top of my head, no, I 6 don't. 7 Q. If I told you that Steve Copper 8 said in his deposition that you asked for a 9 medical note from Wendy Gauthier related to her 10 pregnancy in whether she could do her job and, 11 lift, does that refresh your memory that you 12 received a medical note from Wendy Gauthier? 13 MR. GRIGGS: Objection. 14 THE WITNESS: No, sir. 15 Q. (By Mr. Shea) Does that sound like 16 something you would do? 17 MR. GRIGGS: Objection. 18 Q. (By Mr. Shea) Or would have done? 19 A. Would have done what? 20 Q. Ask Wendy Gauthier for a medical 21 note to clear her to do her job? 22 A. For what reason? 23 Q. To do her job as a CNA because she 24 was pregnant?</p>

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<p>1 A. No, sir.</p> <p>2 Q. You would not do that?</p> <p>3 A. No, sir.</p> <p>4 Q. Meaning correct you would not do</p> <p>5 that, correct?</p> <p>6 A. I would not.</p> <p>7 Q. Ask her for a medical note?</p> <p>8 A. For what reason?</p> <p>9 Q. Related to her pregnancy?</p> <p>10 A. Never.</p> <p>11 Q. Did you ask for a medical note</p> <p>12 related to anything, injury at work?</p> <p>13 A. You know, I don't recall asking her</p> <p>14 for a medical note for anything.</p> <p>15 Q. Do you recall her taking any time</p> <p>16 off for any reason, Wendy Gauthier?</p> <p>17 A. No, scheduled time off, no.</p> <p>18 Q. Or unscheduled time off?</p> <p>19 A. As I said prior, I do remember</p> <p>20 there were some attendance issues. What and</p> <p>21 how, I cannot tell you.</p> <p>22 Q. If Wendy Gauthier had</p> <p>23 complications related to her pregnancy and she</p> <p>24 needed an accommodation for that, who would she</p>	<p>1 light duty, who would she go to, you?</p> <p>2 A. If she were injured at work and on</p> <p>3 compensation and the physician from the</p> <p>4 compensation that she went to sent her back to</p> <p>5 work with an accommodation for light duty, the</p> <p>6 light duty is very specified.</p> <p>7 Q. Like lifting restriction?</p> <p>8 A. And/or bending or sitting or</p> <p>9 whatever, it's very specific. If I could</p> <p>10 accommodate it, I would do so. But it would</p> <p>11 have to be accommodated on like if Wendy was</p> <p>12 working 11:00 to 7:00, I can't accommodate that,</p> <p>13 we do not have light duty on 11:00 to 7:00.</p> <p>14 Q. Do you know whether she asked for</p> <p>15 light duty on another shift?</p> <p>16 A. I don't remember her asking for</p> <p>17 light duty.</p> <p>18 Q. You don't remember either way?</p> <p>19 A. No, sir.</p> <p>20 Q. Meaning correct you don't remember</p> <p>21 either way?</p> <p>22 MR. GRIGGS: Form of the question.</p> <p>23 THE WITNESS: I don't know what</p> <p>24 you are asking.</p>
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<p>1 have gone to, you?</p> <p>2 MR. GRIGGS: Objection. Assumes</p> <p>3 facts not in the record.</p> <p>4 Q. (By Mr. Shea) You may answer?</p> <p>5 A. If she had complications with her</p> <p>6 pregnancy, I hoped she would go to her</p> <p>7 physician.</p> <p>8 Q. If she needed an accommodation for</p> <p>9 a physical impairment, would she go to you on</p> <p>10 that?</p> <p>11 MR. GRIGGS: Objection to the form.</p> <p>12 THE WITNESS: Am I supposed to</p> <p>13 answer?</p> <p>14 Q. (By Mr. Shea) Yes.</p> <p>15 MR. GRIGGS: Objection to the form</p> <p>16 of the question. Answer if you understand</p> <p>17 it.</p> <p>18 THE WITNESS: I'm not, can you just</p> <p>19 clarify that? I just really want to answer</p> <p>20 honestly and that I understand it.</p> <p>21 Q. (By Mr. Shea) Sure. I'll give you</p> <p>22 two different scenarios.</p> <p>23 If Wendy Gauthier was injured at</p> <p>24 work and she needed an accommodation such as</p>	<p>1 Q. (By Mr. Shea) Meaning I'm correct</p> <p>2 that you don't remember either way whether she</p> <p>3 asked for light duty on another shift?</p> <p>4 A. I don't recall her ever asking for</p> <p>5 light duty.</p> <p>6 Q. You don't know either way?</p> <p>7 A. I don't know what either way?</p> <p>8 Q. You don't recall either way whether</p> <p>9 she did or she didn't?</p> <p>10 A. I don't recall her asking for light</p> <p>11 duty.</p> <p>12 Q. She may have and you just don't</p> <p>13 recall?</p> <p>14 A. I don't recall.</p> <p>15 Q. My question to you is could she</p> <p>16 have and you just don't recall?</p> <p>17 A. I suppose she could have. I just</p> <p>18 don't recall her every asking.</p> <p>19 Q. Okay, that was my question.</p> <p>20 Would you be the person she would</p> <p>21 talk to about that light duty?</p> <p>22 A. Eventually, yes.</p> <p>23 Q. Which shift did you supervise, all</p> <p>24 of them?</p>

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<p>1 A. All of them.</p> <p>2 Q. How many were there?</p> <p>3 A. Three.</p> <p>4 Q. Did you ever give light duty to a</p> <p>5 CNA?</p> <p>6 A. Yes, I believe I may have.</p> <p>7 Q. Which ones, do you remember?</p> <p>8 A. I don't remember.</p> <p>9 Q. For what reason?</p> <p>10 A. If someone, I believe, if someone</p> <p>11 were injured at work and had a compensation</p> <p>12 claim and as part of them working and starting</p> <p>13 to return to work, to accommodate them, if I had</p> <p>14 something to accommodate that for them, I would</p> <p>15 then provide that. Who the employee was, I</p> <p>16 couldn't tell you off the top of my head. It's</p> <p>17 been some time and I honestly don't recall.</p> <p>18 Q. Did Wendy Gauthier ever ask you for</p> <p>19 light duty?</p> <p>20 A. I don't recall that.</p> <p>21 Q. Did she ever have a compensation</p> <p>22 claim?</p> <p>23 A. I don't recall that.</p> <p>24 Q. Do you have to have a worker's</p>	<p>1 Sandalwood for which they needed an</p> <p>2 accommodation, who would they talk to, you?</p> <p>3 A. No.</p> <p>4 Q. Who would they talk to?</p> <p>5 A. I'm trying to think. I can't ever</p> <p>6 recall that ever happening in my career really.</p> <p>7 Q. I'm not asking you whether it</p> <p>8 occurred, I'm just asking you who would they</p> <p>9 talk to. If I'm a CNA --</p> <p>10 A. I think that would have to go</p> <p>11 through HR. I'm thinking that has to be</p> <p>12 approved by HYR, policy.</p> <p>13 Q. You don't know?</p> <p>14 A. No, because I never had anybody.</p> <p>15 * Q. Do you know whether a physical</p> <p>16 impairment in the form of complications from a</p> <p>17 pregnancy can amount to a physical impairment</p> <p>18 for which an accommodation may need to be</p> <p>19 granted?</p> <p>20 MR. GRIGGS: Objection. She's not</p> <p>21 an expert.</p> <p>22 Q. (By Mr. Shea) You can answer.</p> <p>23 A. I didn't hear the question.</p> <p>24 MR. SHEA: Can you read that back,</p>
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<p>1 compensation claim to get an accommodation?</p> <p>2 A. Accommodation for what?</p> <p>3 Q. Such as light duty?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you have to be on worker's comp?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is that your rule?</p> <p>8 A. No, sir.</p> <p>9 Q. That was SunBridge's rule?</p> <p>10 A. It's a rule every place I've</p> <p>11 worked, sir.</p> <p>12 MR. GRIGGS: I'll object to</p> <p>13 everything in terms of all the questions</p> <p>14 you asked regarding accommodations in terms</p> <p>15 of requiring lead a conclusion. Insofar as</p> <p>16 implicating the terms in the American</p> <p>17 Disabilities Act. I'm not sure she</p> <p>18 understands what that means.</p> <p>19 Q. (By Mr. Shea) Are you familiar</p> <p>20 with the handicap laws, handicap discrimination</p> <p>21 laws?</p> <p>22 A. No, I can't tell you that I'm</p> <p>23 familiar with it.</p> <p>24 Q. If a CNA had a handicap at</p>	<p>1 please?</p> <p>2</p> <p>3 * (Question read)</p> <p>4</p> <p>5 MR. GRIGGS: Objection, she's not</p> <p>6 an expert.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 Q. (By Mr. Shea) You don't know.</p> <p>9 In my second hypothetical. If I'm</p> <p>10 a pregnant woman with complications relating to</p> <p>11 my pregnancy and I'm at Sandalwood and I'm a CNA</p> <p>12 and I want an accommodation such as time off</p> <p>13 from work or to use the ladies room more often</p> <p>14 than I normally would, those sorts of</p> <p>15 accommodations, who would I go to on that, do</p> <p>16 you know?</p> <p>17 A. You know what, I would imagine</p> <p>18 myself and administration and HQR.</p> <p>19 Q. Who would that be for Wendy</p> <p>20 Gauthier at the time? Who would that have been</p> <p>21 back in 2003 and 2004, yourself and?</p> <p>22 A. It was Steve at that time.</p> <p>23 Q. Steve Copper?</p> <p>24 A. I think it was in 2004, I don't</p>

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<p>1 know when it exactly started 2004 and Ha R, I'm 2 sure would go to corporate. 3 Q. Who's corporate? 4 A. Hx Rc I believe is out in Texas. I 5 really don't know, but it would go through 6 corporate and that would be the administrator 7 who would follow through with it. 8 Q. Are you aware of any reason you 9 would be asking Wendy Gauthier for medical notes 10 while she was employed as a CNA at Sandalwood. 11 A. I know all employees had physicals 12 prior to employment. 13 Q. Other than that I mean? 14 A. Let's see. I believe an employee 15 out for three days or greater, they would have 16 to have a doctor's note. I think there's a 17 policy to that effect. 18 Q. You are not sure? 19 A. The exact time no, but I believe 20 there's something that if you're absent for 21 three days or more, you would have to have a 22 doctor's note. 23 Q. What would the doctor's note say? 24 A. I have no idea.</p>	<p>1 2 3 FURTHER EXAMINATION BY MR. GRIGGS: 4 5 Q. I guess just while you were at 6 Sandalwood, do you recall any employees that 7 were pregnant? 8 A. No. 9 MR. GRIGGS: No further questions. 10 MR. SHEA: Thank you. 11 12 (Deposition concluded at 2:47 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24</p>
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<p>1 Q. What would be the purpose of the 2 doctor's note? 3 A. If a person were ill with strep 4 throat and they saw a physician, the note might 5 say that I saw Jane Doe on such and such a date 6 for whatever and was unable to work for such and 7 such a time or able to return in such and such a 8 time. It would validate their absences for 9 three days greater than. 10 Q. Is there any other reason that you 11 are aware of that you would need a doctor's note 12 as a CNA? 13 A. It wouldn't be seen as a CNA, it 14 was an HR policy. I believe if you were ill the 15 day before or day after a holiday, something to 16 that extent. 17 Q. Any other reason? 18 A. Workman's comp. 19 Q. Anything else? 20 A. Not that I'm aware of. I really 21 honestly can't just sit here and come up with an 22 answer for you, sir. 23 MR. SHEA: I don't have anything 24 further.</p>	<p>1 I, ELISABETH ZAHARIADIS, a Notary Public 2 in and for the Commonwealth of Massachusetts, do 3 hereby certify that ANN MARIE KENDALL appeared 4 before me, satisfactorily identified herself, on 5 the 8th day of February, 2007, at Worcester, 6 Massachusetts, and was by me duly sworn to 7 testify to the truth and nothing but the truth 8 as to her knowledge touching and concerning the 9 matters in controversy in this cause; that she 10 was thereupon examined upon her oath and said 11 examination reduced to writing by me; and that 12 the statement is a true record of the testimony 13 given by the witness, to the best of my 14 knowledge and ability. 15 I further certify that I am not a relative 16 or employee of counsel/attorney for any of the 17 parties, nor a relative or employee of such 18 parties, nor am I financially interested in the 19 outcome of the action. 20 WITNESS MY HAND this 3rd day of March, 21 2007. 22 23 Elisabeth Zahariadis My Commission expires: 24 Notary Public October 5, 2012</p>

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<p>1 Today's date: March 3, 2007</p> <p>2 To: K. Scott Griggs, Esq.</p> <p>3 Copied to: Michael O. Shea, Esq.</p> <p>4 From: Elisabeth Zahariadis</p> <p>5 Deposition of: Ann Marie Kendall</p> <p>6 Taken: February 8, 2007</p> <p>7 Action: WENDY GAUTHIER</p> <p>8 Vs. SUNHEALTH SPECIALTY</p> <p>9 SERVICES, INC., ET AL.</p> <p>10</p> <p>11</p> <p>12 Enclosed is a copy of Ms. Kendall's</p> <p>13 deposition. Pursuant to the Rules of Civil</p> <p>14 Procedure, Ms. Kendall has thirty days to sign</p> <p>15 the deposition from today's date.</p> <p>16 Please have Ms. Kendall sign the enclosed</p> <p>17 signature page. If there are any errors, please</p> <p>18 have her mark the page, line and error on the</p> <p>19 enclosed correction sheet. She should not mark</p> <p>20 the transcript itself. This addendum should be</p> <p>21 forwarded to all interested parties.</p> <p>22 Thank you for your cooperation in this</p> <p>23 matter.</p> <p>24</p>	<p>1 CORRECTION SHEET</p> <p>2 DEPONENT: Ann Marie Kendall</p> <p>3 CASE: Gauthier V. Sunhealth Specialty Services</p> <p>4 DATE TAKEN: February 8, 2007</p> <p>5 *****</p> <p>6 PAGE/ LINE/ CHANGE OR CORRECTION AND REASON</p> <p>7 *****</p> <p>8 / /</p> <p>9 / /</p> <p>10 / /</p> <p>11 / /</p> <p>12 / /</p> <p>13 / /</p> <p>14 / /</p> <p>15 / /</p> <p>16 / /</p> <p>17 / /</p> <p>18 / /</p> <p>19 / /</p> <p>20 / /</p> <p>21 / /</p> <p>22 / /</p> <p>23 / /</p> <p>24 / /</p>
<p>Page 87</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 DISTRICT OF MASSACHUSETTS</p> <p>3</p> <p>4 *****</p> <p>5 WENDY GAUTHIER, *</p> <p>6 Plaintiff *</p> <p>7 vs. *No.: 05cv40119-FDS</p> <p>8 SUNHEALTH SPECIALTY *</p> <p>9 SERVICES, INC. and SUNBRIDGE*</p> <p>10 HEALTHCARE CORPORATION, *</p> <p>11 Defendants *</p> <p>12 *****</p> <p>13</p> <p>14</p> <p>15 I, ANN MARIE KENDALL, do hereby certify,</p> <p>16 under the pains and penalties of perjury, that</p> <p>17 the foregoing testimony is true and accurate, to</p> <p>18 the best of my knowledge and belief.</p> <p>19 WITNESS MY HAND, this day of ,</p> <p>20 2007.</p> <p>21</p> <p>22 ANN MARIE KENDALL</p> <p>23 EZ</p> <p>24</p>	

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EXHIBIT 5

KATHLEEN D. RAYMOND
January 24, 2007

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3

4 *****

5 WENDY GAUTHIER, *

6 Plaintiff *

7 vs. *No.: 05cv40119-FDS

8 SUNHEALTH SPECIALTY *

9 SERVICES, INC. and SUNBRIDGE *

10 HEALTHCARE CORPORATION, *

11 Defendants *

12 *****

13

14

15 DEPOSITION OF: KATHLEEN D. RAYMOND

16 CATUOGNO COURT REPORTING SERVICES

17 446 Main Street

18 Worcester, Massachusetts

19 January 24, 2007 9:46 a.m.

20

21

22

23 Elisabeth Zahariadis

24 Certified Shorthand Reporter

KATHLEEN D. RAYMOND**January 24, 2007**

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF MICHAEL O. SHEA, P.C.</p> <p>5 451 Main Street</p> <p>6 Wilbraham, MA 01095</p> <p>7 BY: MICHAEL O. SHEA, ESQ.</p> <p>8 (413) 596-8005 FAX 596-8095</p> <p>9</p> <p>10 Representing the Defendant:</p> <p>11 LAWSON & WEITZEN, LLP</p> <p>12 88 Black Falcon Avenue</p> <p>13 Boston, MA 02210</p> <p>14 BY: MICHAEL WILLIAMS, ESQ.</p> <p>15 (617) 439-4990 FAX 439-3987</p> <p>16</p> <p>17 In attendance: Wendy Gauthier</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 KATHLEEN D. RAYMOND, Deponent, having</p> <p>2 first been satisfactorily identified and duly</p> <p>3 sworn, deposes and states as follows:</p> <p>4</p> <p>5 MR. SHEA: Usual stipulations?</p> <p>6 MR. WILLIAMS: Yes.</p> <p>7</p> <p>8</p> <p>9 EXAMINATION BY MR. SHEA:</p> <p>10</p> <p>11 Q. Good morning, thank you for coming</p> <p>12 here today. I know that you had to arrange your</p> <p>13 schedule and whatnot to be here.</p> <p>14 A. Yes.</p> <p>15 Q. We served a subpoena on you a while</p> <p>16 back, so you are here under a valid subpoena,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever been deposed before?</p> <p>20 This a deposition, have you ever been deposed?</p> <p>21 A. What's that mean?</p> <p>22 Q. Sat down with a stenographer in the</p> <p>23 room and asked questions.</p> <p>24 A. Never.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: KATHLEEN D. RAYMOND</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Shea 4</p> <p>7 Mr. Williams 34</p> <p>8</p> <p>9 FURTHER EXAMINATION BY:</p> <p>10 Mr. Shea 52/61</p> <p>11 Mr. Williams 58</p> <p>12</p> <p>13</p> <p>14 EXHIBIT: PAGE:</p> <p>15 (none offered)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 Q. My name is Michael Shea and I</p> <p>2 represent Wendy Gauthier who's a plaintiff in a</p> <p>3 case against Sunhealth Specialty Services and</p> <p>4 Sunbridge Healthcare Corporation. I'm just</p> <p>5 going to ask you a few questions here today. It</p> <p>6 shouldn't be too long.</p> <p>7 If you have any questions about the</p> <p>8 questions I'm asking you or you want me to</p> <p>9 rephrase them, will you ask me to rephrase them,</p> <p>10 otherwise can I assume you understood the</p> <p>11 question?</p> <p>12 A. Yes.</p> <p>13 Q. You have to answer audibly for the</p> <p>14 record so the stenographer can type what you're</p> <p>15 saying.</p> <p>16 A. Okay.</p> <p>17 Q. A nod of the head or mm-hmm won't</p> <p>18 do.</p> <p>19 A. Okay.</p> <p>20 Q. Doesn't mean you have to answer yes</p> <p>21 or no, it just means that you have to give an</p> <p>22 audible response.</p> <p>23 Are you under the influence of any</p> <p>24 medication or anything that would impair your</p>

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KATHLEEN D. RAYMOND**January 24, 2007**

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 ability to answer questions today?</p> <p>2 A. No.</p> <p>3 Q. Have you talked to anyone about</p> <p>4 Wendy Gauthier's employment at Sunbridge since</p> <p>5 she was terminated?</p> <p>6 A. No.</p> <p>7 Q. Do you know why Wendy Gauthier was</p> <p>8 terminated from Sunbridge?</p> <p>9 A. No.</p> <p>10 Q. Do you know she was pregnant at</p> <p>11 Sunbridge?</p> <p>12 A. Yes.</p> <p>13 Q. Do you think that had something to</p> <p>14 do with it?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Did you receive a phone call from</p> <p>17 some lawyers regarding this case or a lawyer</p> <p>18 regarding this case other than my office?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember who you spoke to?</p> <p>21 A. No.</p> <p>22 Q. Do you remember if it was from the</p> <p>23 employer, Sunhealth or Sunbridge, a lawyer</p> <p>24 representing?</p>	<p>1 Q. What school was that?</p> <p>2 A. You are asking me, this has been a</p> <p>3 while ago. Certification through the state of</p> <p>4 Massachusetts for asbestos and lead. It was in</p> <p>5 Springfield. I can't remember the name.</p> <p>6 Q. Did you graduate from that school?</p> <p>7 A. Yes, I did.</p> <p>8 Q. When?</p> <p>9 A. I don't remember dates.</p> <p>10 Q. Do you have any education or</p> <p>11 training beyond that?</p> <p>12 A. Just being a certified nursing</p> <p>13 assistant.</p> <p>14 Q. What did you have to do to become a</p> <p>15 certified nursing assistant?</p> <p>16 A. Take a course.</p> <p>17 Q. Where did you complete that course?</p> <p>18 A. In Florida.</p> <p>19 Q. Do you remember where?</p> <p>20 A. No.</p> <p>21 Q. Do you remember how long the course</p> <p>22 was?</p> <p>23 A. The course is a four-week course.</p> <p>24 Q. You have a certificate?</p>
Page 7	Page 9
<p>1 A. It was lawyers representing</p> <p>2 Sunbridge and my attorney spoke to him. I</p> <p>3 didn't speak to him. I let my attorney speak to</p> <p>4 him.</p> <p>5 Q. You don't remember who he spoke to.</p> <p>6 Who is your attorney?</p> <p>7 A. Rickie T. Weiner.</p> <p>8 Q. Does he represent you regarding a</p> <p>9 worker's comp case?</p> <p>10 A. Yes, he does.</p> <p>11 Q. Who is that with?</p> <p>12 A. Sunbridge, Sandlewood, same</p> <p>13 company.</p> <p>14 Q. You worked for Sunbridge?</p> <p>15 A. Yes, I did.</p> <p>16 Q. For how long, over what time</p> <p>17 period?</p> <p>18 A. Three years.</p> <p>19 Q. What did you do for them?</p> <p>20 A. Certified nursing assistant.</p> <p>21 Q. What's your educational background</p> <p>22 basically?</p> <p>23 A. I graduated 12th grade. I went to</p> <p>24 special school for asbestos and lead.</p>	<p>1 A. I do, yes.</p> <p>2 Q. Do you remember approximately when</p> <p>3 you got that certificate, how many years ago?</p> <p>4 A. In the state of Massachusetts, I</p> <p>5 got it approximately seven years ago.</p> <p>6 Q. No other training or education</p> <p>7 other than that?</p> <p>8 A. No.</p> <p>9 Q. Over what time period did you work</p> <p>10 as a CNA at Sunbridge?</p> <p>11 A. Three years.</p> <p>12 Q. Over what time period, from when to</p> <p>13 when? You can give me approximate dates. I'm</p> <p>14 trying to get your best memory.</p> <p>15 A. My last day of employment was July</p> <p>16 of last year.</p> <p>17 Q. July of '06?</p> <p>18 A. Right.</p> <p>19 Q. So three years prior to that is</p> <p>20 when you started roughly?</p> <p>21 A. Right.</p> <p>22 Q. You worked with Wendy Gauthier?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Do you remember an incident where</p>

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4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 she was injured on the job?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what you remember</p> <p>4 about that incident, was she kicked by a</p> <p>5 patient?</p> <p>6 A. Yes, she was.</p> <p>7 Q. Do you remember what happened as a</p> <p>8 result of being kicked by a patient?</p> <p>9 A. Me and a nurse, I can't remember</p> <p>10 the nurse that was on duty, said she needed to</p> <p>11 go to the hospital because she had severe pain</p> <p>12 and we were concerned her being pregnant.</p> <p>13 Q. Who, Wendy?</p> <p>14 A. Wendy Gauthier was pregnant and we</p> <p>15 were concerned that something was wrong with the</p> <p>16 baby and we both insisted that she go to the</p> <p>17 emergency room that night.</p> <p>18 Q. Something was wrong with the baby</p> <p>19 in terms of being kicked?</p> <p>20 A. Right.</p> <p>21 Q. Who was your supervisor at that</p> <p>22 time?</p> <p>23 A. I don't remember, Anne somebody,</p> <p>24 Kendall. She was the director of nursing at the</p>	<p style="text-align: right;">Page 12</p> <p>1 Gauthier on average?</p> <p>2 A. Most of the time when she worked</p> <p>3 third shift.</p> <p>4 Q. How many days a week would you say</p> <p>5 on average?</p> <p>6 A. Four days a week.</p> <p>7 Q. You both worked third shift?</p> <p>8 A. Yes.</p> <p>9 Q. Wendy Gauthier is a CNA and you are</p> <p>10 a CNA?</p> <p>11 A. Yes.</p> <p>12 Q. Did Wendy Gauthier do a good job?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever see her violate any</p> <p>15 policies of Sunbridge?</p> <p>16 A. No.</p> <p>17 Q. In relation to the termination</p> <p>18 date of Wendy Gauthier from Sunbridge which I</p> <p>19 assume was prior to your termination date?</p> <p>20 A. Yes.</p> <p>21 Q. When do you think that injury</p> <p>22 occurred, the injury where Wendy Gauthier was</p> <p>23 kicked in the stomach?</p> <p>24 A. I couldn't tell you exactly to be</p>
<p style="text-align: right;">Page 11</p> <p>1 time, Kendall.</p> <p>2 Q. They were notified, Anne Kendall</p> <p>3 was notified of this injury?</p> <p>4 A. I don't know.</p> <p>5 Q. Was anyone in management or</p> <p>6 supervision notified of the injury?</p> <p>7 A. I'm not sure. We worked third</p> <p>8 shift.</p> <p>9 Q. Did Wendy Gauthier go to the</p> <p>10 hospital?</p> <p>11 A. Yes, she did.</p> <p>12 Q. During your shift?</p> <p>13 A. Yes.</p> <p>14 Q. Somebody must have known she had an</p> <p>15 injury on the job for her to leave her shift?</p> <p>16 A. The nurse that was on duty that</p> <p>17 particular night.</p> <p>18 Q. She knew?</p> <p>19 A. She knew and sent her to the</p> <p>20 emergency room.</p> <p>21 Q. The nurses are basically your</p> <p>22 supervisor?</p> <p>23 A. On third shift, yes.</p> <p>24 Q. How often did you work with Wendy</p>	<p style="text-align: right;">Page 13</p> <p>1 honest with you.</p> <p>2 Q. If you had to approximate, would</p> <p>3 you say six months prior to her termination, a</p> <p>4 year prior to her termination?</p> <p>5 A. I don't remember.</p> <p>6 Q. Do you remember if there were any</p> <p>7 ramifications or repercussions as a result of</p> <p>8 Wendy Gauthier medically, did she have any</p> <p>9 issues after that?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you work with her after the</p> <p>12 kicking incident?</p> <p>13 A. I believe they fired her. I can't</p> <p>14 remember exactly.</p> <p>15 Q. You believe they fired her after</p> <p>16 that kicking incident?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. You don't know why they terminated</p> <p>19 her employment, Wendy Gauthier?</p> <p>20 A. No, I don't know.</p> <p>21 Q. Did you ever receive any warnings</p> <p>22 or reprimands at Sunbridge?</p> <p>23 A. No.</p> <p>24 Q. You know I'm referring to</p>

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5 (Pages 14 to 17)

Page 14	Page 16
<p>1 Sunbridge – 2 A. Sandlewood, right. 3 Q. Yes. No warnings or reprimands and 4 yet you were terminated? 5 A. Yes. 6 Q. Why were you terminated? 7 A. I was terminated because they said 8 they couldn't provide me a light duty job 9 anymore. 10 Q. Isn't it true they had light duty 11 jobs available at Sunbridge? 12 A. Yes, they do. 13 Q. What are those jobs? 14 A. Filing, answering the phone, I did 15 activities assistant for a while. 16 Q. I'm sorry what the last part? 17 A. Activities assistant. 18 Q. What is that? 19 A. You go and play games with the 20 elderly, play cards, bingo. 21 Q. Did they let other employees have 22 that in terms of light duty, have those job 23 responsibilities. 24 A. They do for certain a period of</p>	<p>1 Q. Have you ever been fired from any 2 other job? 3 A. No. 4 Q. Other than Sunbridge? 5 A. No. 6 Q. When you say activities assistant, 7 answering phones and filing as a light duty job, 8 did you witness other CNAs getting light duty 9 jobs of this sort? 10 A. Yes. 11 Q. Do you remember any names of those 12 employees? 13 A. I don't remember names. They were 14 just other CNAs that got provided light duty 15 like myself and then terminated. 16 Q. For similar reasons do you think 17 because they got injured? 18 MR. WILLIAMS: Objection. You can 19 answer. That's just for the record. 20 THE WITNESS: I believe honestly 21 in my heart that's exactly why they were 22 terminated. 23 Q. (By Mr. Shea) Do you remember the 24 names of any of those employees?</p>
Page 15	Page 17
<p>1 time. 2 Q. Did you do the activities 3 assistant? 4 A. Yes, I did. 5 Q. They gave you light duty for some 6 period of time and then they took it away when 7 they terminated you? 8 A. Yes. 9 Q. Do you believe that they terminated 10 you because of the worker's comp claim and the 11 fact that you were injured? 12 A. Yes. 13 Q. By the way, you never spoke to me 14 before today, right? 15 A. No. 16 Q. As far as speaking with anyone from 17 my office, did you speak with anyone from my 18 office about scheduling a deposition or anything 19 like that? 20 A. I believe a lady called and said I 21 was scheduled for a deposition. 22 Q. Other than that, did you speak to 23 anyone from my office? 24 A. No.</p>	<p>1 A. No, not offhand. 2 Q. If I give you a minute, is it 3 possible that you could think of? 4 A. I know there was a Debbie Laranger. 5 That's one of them off the top of my head. 6 Q. She was injured on the job? 7 A. Yes. 8 Q. How was she injured on the job? 9 A. I think by lifting a patient. 10 Q. How were you injured on the job? 11 A. Patient grabbed my wrist and 12 twisted and that's how my injury occurred. But 13 I continued to work for two months after that 14 until my hand got so bad, I couldn't, I had a 15 hard time functioning doing my regular work. 16 Q. You would have gone back to your 17 regular job if you had light duty? 18 A. I can never be a certified nursing 19 assistant again. 20 Q. What about Debbie Laranger you 21 said? 22 A. I don't know. 23 Q. Is it Laranger? 24 A. I believe that's how you say her</p>

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1 name.
 2 Q. Or Lagranger?
 3 A. Laranger, I believe.
 4 Q. She was injured on the job, did she
 5 received light duty?
 6 A. Yes.
 7 Q. Did she injure her back or what
 8 part of her body?
 9 A. She injured her back.
 10 Q. What kind of light duty did they
 11 do?
 12 A. I'm not sure of her light duty.
 13 They brought her back. They terminated me and
 14 then she came back.
 15 Q. Why did they bring her back, do you
 16 know?
 17 A. I don't know.
 18 Q. Did you say they terminated
 19 ultimately?
 20 A. I believe so.
 21 Q. Can you remember the names of any
 22 other CNAs that were injured and terminated?
 23 A. I'm not sure. Honestly, I couldn't
 24 tell you.

Page 19

1 Q. As a CNA, if you wanted to take
 2 some time off, sick time, personal time, would
 3 the procedure be that you notified your
 4 supervisor of the change in the schedule?
 5 A. We usually if we were going to need
 6 a day off, we usually would ask another CNA to
 7 switch days with us.
 8 Q. Then someone would notify the
 9 supervisor of that verbally, I assume?
 10 A. Verbally, yes.
 11 Q. The supervisor would be whom, the
 12 nurse?
 13 A. The nurse on duty or the scheduler.
 14 Q. Either one?
 15 A. Yes.
 16 Q. So the normal procedure would be
 17 you just make arrangements with your coworker?
 18 A. Right.
 19 Q. Fellow CNA to cover your time?
 20 A. Right.
 21 Q. That's not necessarily put in a
 22 schedule at this point, you are confirming
 23 coverage, right?
 24 A. Right.

Page 20

1 Q. Then you are telling your
 2 supervisor verbally the nurse on duty or the
 3 scheduler about the change, right?
 4 A. Well, usually if the nurse, the
 5 third shift supervisor would just automatically
 6 just change it, erase it and put the names on
 7 whatever day. Say that I needed a day off and I
 8 asked Wendy to cover for me that day, she would
 9 just erase it and just change the schedule.
 10 Q. You wouldn't erase it?
 11 A. No, the nurse has to erase it.
 12 Q. The nurse or the scheduler?
 13 A. Right.
 14 Q. Do you remember if Wendy Gauthier
 15 was ever accused of a no call, no show?
 16 A. I do believe one time.
 17 Q. Do you know whether that led to her
 18 termination of employment?
 19 A. I can't say that led her to her
 20 termination. I know they had switched. Her and
 21 Lisa Franks had switched days and Lisa didn't
 22 show up. And Lisa has been known because I
 23 have switched with her a few times myself and
 24 she didn't show up for work.

Page 21

1 Q. That wouldn't be Wendy Gauthier's
 2 fault, right, it would be Lisa Franks who didn't
 3 show up?
 4 MR. WILLIAMS: Objection.
 5 Q. (By Mr. Shea) Right?
 6 A. Yes.
 7 Q. So long as in that example that you
 8 just gave me, instance that you just gave me.
 9 A. Right.
 10 Q. So long as Wendy Gauthier made the
 11 proper arrangements, in other words, went to
 12 Lisa Franks, said, can you cover me on this
 13 date, somebody communicated that to the
 14 supervisor?
 15 A. Right.
 16 Q. Then Wendy Gauthier has to fill her
 17 responsibilities under the policies and
 18 procedures of Sunbridge, right?
 19 MR. WILLIAMS: Objection.
 20 Q. (By Mr. Shea) You may answer.
 21 A. I'm not sure what the policies and
 22 procedures are at Sunbridge.
 23 Q. Well, the policy and procedure for
 24 changing time is what I'm talking about, that

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7 (Pages 22 to 25)

Page 22	Page 24
<p>1 you just outlined as far as you --</p> <p>2 A. As far as I know, yes.</p> <p>3 MR. WILLIAMS: Objection. Just so</p> <p>4 you know, when I say objection, you go</p> <p>5 ahead and answer. It's just something we</p> <p>6 have to do for the record.</p> <p>7 MR. SHEA: Right. Unless somebody</p> <p>8 tells you not to answer, you can answer.</p> <p>9 THE WITNESS: Okay.</p> <p>10 Q. (By Mr. Shea) Let me be clear.</p> <p>11 The policies and procedures for switching time</p> <p>12 or taking time off that we just discussed, you</p> <p>13 just outlined for me, very well I think, were</p> <p>14 those followed by Wendy Gauthier as far as you</p> <p>15 know?</p> <p>16 A. As far as I know, yes.</p> <p>17 Q. In a that instance, did Lisa</p> <p>18 Franks, did she follow those procedures, Wendy</p> <p>19 Gauthier?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Was Lisa Franks terminated as a</p> <p>22 result of that incident?</p> <p>23 A. I'm not sure about Lisa.</p> <p>24 Q. Was she terminated at some point,</p>	<p>1 A. Actually, I just went back there, I</p> <p>2 don't know, six months ago and applied for the</p> <p>3 activities assistant job. I was told that, I</p> <p>4 don't know how exact words, but I was told they</p> <p>5 couldn't provide me with any job.</p> <p>6 Q. Back when you were terminated, you</p> <p>7 were eligible, you believe that medically,</p> <p>8 physically you could have gone back to light</p> <p>9 duty, filing, answering phones, activities</p> <p>10 assistant, right?</p> <p>11 A. Yes.</p> <p>12 Q. They said we don't have that for</p> <p>13 you, right?</p> <p>14 A. Yes.</p> <p>15 Q. In fact, they did have that for</p> <p>16 you, right?</p> <p>17 A. They did have it at the time.</p> <p>18 Q. They did have light duty available?</p> <p>19 A. When I was working.</p> <p>20 Q. In terms of filing, yes?</p> <p>21 A. I don't know so much as filing as</p> <p>22 an actual job opening. They provided light duty</p> <p>23 for me or a light duty job. This was actually a</p> <p>24 job opening, activities assistant and the job</p>
Page 23	Page 25
<p>1 do you know?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Do you recall whether Wendy</p> <p>4 Gauthier had any complications with her</p> <p>5 pregnancy?</p> <p>6 A. I don't know. I really don't know.</p> <p>7 I hope not, but I don't know for sure.</p> <p>8 Q. You worked at Sunbridge which is</p> <p>9 also known as Sandlewood?</p> <p>10 A. Right.</p> <p>11 Q. That's the name of the location?</p> <p>12 A. Right.</p> <p>13 Q. You worked there for three years</p> <p>14 and had good performance evaluations?</p> <p>15 A. Always.</p> <p>16 Q. What exactly were you told was the</p> <p>17 reason for your termination?</p> <p>18 A. They couldn't provide me a light</p> <p>19 duty job.</p> <p>20 Q. Yet there was light duty available?</p> <p>21 A. Yes.</p> <p>22 Q. What light duty job do you think</p> <p>23 was available at the time that they terminated</p> <p>24 you?</p>	<p>1 that I applied for. I went in and I was told</p> <p>2 you don't have to fill out the application</p> <p>3 completely, just sign it, turn it in and we'll</p> <p>4 look at it. I proceeded to call for two weeks</p> <p>5 saying, do I get the job, I never missed hardly</p> <p>6 any time from work. I just didn't understand</p> <p>7 why. So I was told that they weren't interested</p> <p>8 in me more or less. That's what I got out of</p> <p>9 the conversation.</p> <p>10 Q. But the activities assistant job,</p> <p>11 there was an opening that you could have gone</p> <p>12 into?</p> <p>13 A. Yes, there was.</p> <p>14 Q. That could have been light duty?</p> <p>15 A. It's a job opening. They said I</p> <p>16 didn't meet the qualifications. You have to</p> <p>17 lift 50 pounds, but I don't ever remember an</p> <p>18 activities assistant lifting 50 pounds. You sit</p> <p>19 there and play games with the clients, you push</p> <p>20 a little cart around. It's just one of their</p> <p>21 stipulation of their job descriptions as an</p> <p>22 activities assistant.</p> <p>23 Q. How long were you on light duty, I</p> <p>24 think you said at some point that you were on</p>

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8 (Pages 26 to 29)

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<p>1 light duty?</p> <p>2 A. Over a year.</p> <p>3 Q. During that time frame, what did</p> <p>4 you do?</p> <p>5 A. I filed.</p> <p>6 Q. Where did you go the filing?</p> <p>7 A. Downstairs in the social worker's</p> <p>8 office.</p> <p>9 Q. You filed full time for about a</p> <p>10 year?</p> <p>11 A. Yes.</p> <p>12 Q. Did you also answer phones?</p> <p>13 A. Yes.</p> <p>14 Q. In the social worker's office, who</p> <p>15 did you work for when you were on light duty?</p> <p>16 If you don't remember the name.</p> <p>17 A. I don't remember the name.</p> <p>18 Q. If it comes to you, tell me what it</p> <p>19 is.</p> <p>20 Sitting here today, do you remember</p> <p>21 any other employees that were on light duty such</p> <p>22 as yourself and Debbie Laranger?</p> <p>23 A. Not offhand, no.</p> <p>24 Q. When you answered the phones down</p>	<p>1 A. For myself?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. How do you feel about how Sunbridge</p> <p>5 treated Wendy Gauthier?</p> <p>6 MR. WILLIAMS: Objection.</p> <p>7 THE WITNESS: My personal opinion?</p> <p>8 Q. (By Mr. Shea) Yes.</p> <p>9 A. I think it was unfair.</p> <p>10 Q. Why?</p> <p>11 A. I believe, she was pregnant. I've</p> <p>12 been pregnant myself at 39 years old. Wendy's</p> <p>13 younger than I am, but working in a nursing</p> <p>14 home, I believe if they should have provided her</p> <p>15 a light duty job, my personal, opinion. Let her</p> <p>16 go on days, give her answering the phones like</p> <p>17 what I did.</p> <p>18 Q. Because they could have done that?</p> <p>19 MR. WILLIAMS: Objection.</p> <p>20 THE WITNESS: They could have done</p> <p>21 that, yes.</p> <p>22 Q. (By Mr. Shea) Anything else on</p> <p>23 that subject that comes to mind?</p> <p>24 A. Just one other thing that I'd like</p>
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<p>1 in the social worker's office, during that</p> <p>2 one-year period, what phone calls were you</p> <p>3 answering basically?</p> <p>4 A. To the facility.</p> <p>5 Q. Just outside calls into the</p> <p>6 facility?</p> <p>7 A. Right.</p> <p>8 MR. SHEA: We're going to take a</p> <p>9 few minutes. I think I'm almost done.</p> <p>10</p> <p>11 (A recess was taken)</p> <p>12</p> <p>13 MR. SHEA: Back on the record.</p> <p>14 Just a few more questions.</p> <p>15 Q. (By Mr. Shea) Is it fair to say</p> <p>16 that Wendy Gauthier worked at Sunbridge with you</p> <p>17 about three to six months, in that range, does</p> <p>18 that sound about right?</p> <p>19 A. It could be, yes.</p> <p>20 Q. Is it fair to say that you feel</p> <p>21 that you were not treated fairly regarding your</p> <p>22 termination of employment from Sunbridge?</p> <p>23 MR. WILLIAMS: Objection.</p> <p>24 Q. (By Mr. Shea) Is that fair to say?</p>	<p>1 to point out. I believe after Wendy got</p> <p>2 terminated from employment, they started to</p> <p>3 where we had to sign, actually have it signed,</p> <p>4 you know, like if I wanted to trade with</p> <p>5 somebody, it had to be signed and given to the</p> <p>6 scheduler and the director of nursing. You had</p> <p>7 to get authorization to have these days off.</p> <p>8 Q. In writing and signed?</p> <p>9 A. Writing and signed by the</p> <p>10 supervisor.</p> <p>11 Q. They didn't have that when Wendy</p> <p>12 Gauthier was there?</p> <p>13 A. They didn't have that at the time,</p> <p>14 no.</p> <p>15 Q. The procedure was different before</p> <p>16 Wendy Gauthier was terminated versus after?</p> <p>17 A. Right.</p> <p>18 Q. Before, Wendy Gauthier was</p> <p>19 terminated all you had to do was ask a CNA to</p> <p>20 take time off or change your schedule is to</p> <p>21 again, notify your coworker, get coverage from</p> <p>22 that coworker and then either the coworker or</p> <p>23 you notified the supervisor verbally, right?</p> <p>24 MR. WILLIAMS: Objection.</p>

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9 (Pages 30 to 33)

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<p>1 THE WITNESS: On third shift?</p> <p>2 Q. (By Mr. Shea) Yes.</p> <p>3 A. Right.</p> <p>4 Q. The supervisor is either the</p> <p>5 scheduler or the nurse on the third shift?</p> <p>6 A. It's usually the nurse, the</p> <p>7 supervisor on third shift whoever happened to be</p> <p>8 supervisor that night. It changed all the time.</p> <p>9 Q. Do you remember who the nurse or</p> <p>10 supervisor was on the third shift on that Lisa</p> <p>11 Franks incident?</p> <p>12 A. I'm not sure who it was.</p> <p>13 Q. Did you ever get a copy of an</p> <p>14 employee handbook at Sunbridge?</p> <p>15 A. Yes.</p> <p>16 Q. When did you get that?</p> <p>17 A. When I first got hired.</p> <p>18 Q. Did you sign for that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember that Wendy Gauthier</p> <p>21 was having problems with her pregnancy where she</p> <p>22 would go to the bathroom and throw up with</p> <p>23 morning sickness?</p> <p>24 A. Yes.</p>	<p>1 THE WITNESS: To be honest with</p> <p>2 you, it's hard for me because of the</p> <p>3 treatment that I got from Sunbridge. So I</p> <p>4 believe whatever they had done to Wendy</p> <p>5 Gauthier, they do it to a lot of employees.</p> <p>6 Q. (By Mr. Shea) You believe that's</p> <p>7 unfair you said earlier?</p> <p>8 A. I believe it's very unfair.</p> <p>9 Q. Last question. Any other names</p> <p>10 come to mind, I just thought I'd see if any of</p> <p>11 this jogged your memory?</p> <p>12 A. You have to understand something,</p> <p>13 they changed administrators or director of</p> <p>14 nursing, it seems like every few months, so I</p> <p>15 mean.</p> <p>16 Q. Who trained you on the call</p> <p>17 procedure where you get coverage and you notify</p> <p>18 the supervisors verbally when Wendy Gauthier was</p> <p>19 there, was it the nurse?</p> <p>20 A. Say that again, I didn't</p> <p>21 understand.</p> <p>22 Q. Somebody told you I assume how to</p> <p>23 change your schedule if you need to by way of -</p> <p>24 A. We've been doing this for a long</p>
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<p>1 Q. That happened on a fairly frequent</p> <p>2 basis; is that correct?</p> <p>3 A. While she was working with me, yes.</p> <p>4 Q. Do you remember she also had to</p> <p>5 keep her legs elevated at times because of her</p> <p>6 pregnancy?</p> <p>7 A. Yes, her feet are swollen.</p> <p>8 Q. Do you remember her telling you</p> <p>9 that she did get light duty notes from her</p> <p>10 doctor to give to Sunbridge relating to her</p> <p>11 medical complications relating to her pregnancy?</p> <p>12 A. Yes.</p> <p>13 Q. Do you remember her telling you</p> <p>14 that she was trying to get back to work and they</p> <p>15 wouldn't let her have light duty or get back to</p> <p>16 work with the medical note she was provided?</p> <p>17 A. Yes.</p> <p>18 Q. Do you think that was unfair?</p> <p>19 MR. WILLIAMS: Objection.</p> <p>20 THE WITNESS: Yes, I believe it's</p> <p>21 unfair.</p> <p>22 Q. (By Mr. Shea) Because there was</p> <p>23 light duty for her to have?</p> <p>24 MR. WILLIAMS: Objection.</p>	<p>1 time. I mean, when the director of nursing was</p> <p>2 there, it was different. It's just the way we</p> <p>3 handled it between ourselves. More or less we</p> <p>4 did it between ourselves.</p> <p>5 Q. Sort of the way you were trained on</p> <p>6 the job?</p> <p>7 A. I don't know about any training.</p> <p>8 We were never trained to do this. We were just</p> <p>9 told if we wanted to switch a day, we could do</p> <p>10 it.</p> <p>11 Q. This is how you do it. You get</p> <p>12 coverage and somebody notifies the supervisor</p> <p>13 verbally?</p> <p>14 A. Normally I can remember, normally</p> <p>15 the nurse that was in charge would just erase it</p> <p>16 out of the book into the schedule. You have to</p> <p>17 understand the scheduler, I'm sure she doesn't</p> <p>18 remember who's on what nights and whoever was</p> <p>19 the nurse that particular night. If I was</p> <p>20 switching with Wendy or Lisa, she would just</p> <p>21 erase our names and put us on a different day.</p> <p>22 Q. It's not your responsibility to</p> <p>23 change the schedule as a CNA?</p> <p>24 A. No, we are not allowed to touch the</p>

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1 book.

2 Q. It's not your responsibility to
3 make absolutely sure that the scheduler is doing
4 her job in changing the schedule?

5 A. Right.

6 MR. SHEA: I don't have anything
7 further.

8

9

10 EXAMINATION BY MR. WILLIAMS:

11

12 Q. Just a moment ago you were talking
13 about a change in policy where now you have to
14 get written authorization for swapping shifts
15 with another CNA?

16 A. It was a paper. I don't know. I
17 can't remember. It's just a paper saying I'm
18 switching this date with this one.

19 Q. You said that that policy was
20 implemented after Wendy Gauthier was fired?

21 A. I believe so, yes.

22 Q. Was it immediately after?

23 A. I can't tell you 100 percent sure.

24 Q. Do you know if this incident had

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1 anything to do with the change in policy?

2 A. I'm not sure.

3 Q. I'm going to be going back over a
4 few of the points jumping around, if I confuse
5 you, just let me know.

6 A. Okay.

7 Q. Earlier you said that you could
8 never be a CNA again, what did you mean by that?

9 A. I cannot do certified nursing
10 assistant anymore. I cannot lift over 10 pounds
11 with my hand. I can't do that. It's just
12 something I can't do anymore.

13 Q. Is that an essential element of the
14 job of being a CNA?

15 A. Yes.

16 Q. If you can't do the lifting, you
17 can't be a CNA?

18 A. Right.

19 MR. SHEA: Objection to the last
20 question.

21 Q. (By Mr. Williams) You talked about
22 how you had been on light duty, I think you said
23 for a year; is that correct?

24 A. A year, maybe a little bit more.

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1 Q. During that year, were you
2 performing the job of a CNA?

3 A. No.

4 Q. Were you performing a different job
5 at Sunbridge?

6 A. Yes.

7 Q. Was there a title for that job that
8 you were performing?

9 A. There was no title. But I want you
10 to understand that when I first came back to
11 Sunbridge, I was on the floor with the
12 residents, I was providing a light duty job, but
13 I was helping the CNAs. I was providing drinks,
14 cleaning pumps and then I got re-injured because
15 one of the residents went to go to the bathroom
16 and affected my arm even more. So my physician
17 said not to have any patient contact.

18 Q. Is it a normal part of a CNA's duty
19 to help residents move, help them stand up,
20 basically have to lift or move them?

21 A. Yes.

22 Q. Let me break down what you were
23 just telling me.

24 When you first came back from being

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1 injured --

2 A. Right.

3 Q. -- you were working at Sunbridge,
4 was it true when you were -- let me start over.

5 The first time you came back and
6 were working at Sunbridge again, the light duty
7 that you were performing, was that acting as a
8 CNA or not a CNA?

9 A. It's helping the CNA out.

10 Q. You were doing a different job
11 helping the CNA as opposed to acting as a CNA
12 yourself?

13 MR. SHEA: Objection.

14 THE WITNESS: I don't understand
15 what you are trying to ask me. The job
16 that I was performing -- the CNAs have a
17 very hectic thing that they do, very
18 hectic. If I can save the CNA time by
19 providing drinks to the residents, snacks
20 to the residents, that cuts off time for
21 them to spend more time with the residents.

22 Q. (By Mr. Williams) You were
23 assisting the CNAs but you weren't performing
24 CNA duties?

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<p>1 MR. SHEA: Objection.</p> <p>2 THE WITNESS: I wasn't cleaning</p> <p>3 the patients or transferring the patients,</p> <p>4 no.</p> <p>5 Q. (By Mr. Williams) When you were</p> <p>6 re-injured, again, you were doing light duty,</p> <p>7 were you doing other duties other than CNA</p> <p>8 duties?</p> <p>9 A. My physician made it a point to let</p> <p>10 Sunbridge know that I am not allowed to have no</p> <p>11 patient contact. That means if a resident goes</p> <p>12 to fall, I can't help.</p> <p>13 Q. Within the duties of certified</p> <p>14 nursing assistant, one of the things would</p> <p>15 prevent residents from falling?</p> <p>16 A. Yes.</p> <p>17 Q. Which would require lifting or</p> <p>18 supporting a considerable weight?</p> <p>19 MR. SHEA: Objection.</p> <p>20 THE WITNESS: Not every resident</p> <p>21 at Sunbridge, someone will ambulate. When</p> <p>22 you are an elderly person, someone would</p> <p>23 fall. They could weigh 90 pounds and</p> <p>24 someone could fall.</p>	<p>1 and I had to, you know, you are working like</p> <p>2 myself third shift takes a lot out of you. Most</p> <p>3 people can't do that shift. You might need a</p> <p>4 day to recuperate being at the hospital for 12</p> <p>5 hours and you would just switch with somebody.</p> <p>6 That was just the understanding we had.</p> <p>7 This policy wasn't in effect. I</p> <p>8 don't know what they are telling you. But I</p> <p>9 know because I've done it myself switch with</p> <p>10 somebody.</p> <p>11 Q. When you say this policy was in</p> <p>12 effect, what policy?</p> <p>13 A. When we used to switch days, you</p> <p>14 have a schedule book that sits out on the</p> <p>15 nurse's station. You don't know if Jack</p> <p>16 whatever -- we are all busy on third shift, you</p> <p>17 know, I don't know what transpired, but I know</p> <p>18 that particular thing, they did switch. But you</p> <p>19 have different people in the schedule book. It</p> <p>20 could have been one of the other CNAs for all we</p> <p>21 know.</p> <p>22 We were told not to be erasing or</p> <p>23 adding names on or anything else because the</p> <p>24 scheduler doesn't know. If she thinks I'm</p>
Page 39	Page 41
<p>1 Q. (By Mr. Williams) You also talked</p> <p>2 about the activities assistant job that you were</p> <p>3 applying for?</p> <p>4 A. Yes.</p> <p>5 Q. That's not a job that a CNA --</p> <p>6 that's a completely different job, correct?</p> <p>7 A. Right.</p> <p>8 Q. Earlier we were describing the</p> <p>9 incident between with Wendy Gauthier and Lisa</p> <p>10 Franks.</p> <p>11 A. Yes.</p> <p>12 Q. Who told you about that?</p> <p>13 A. Who told me about that?</p> <p>14 Q. How do you know that?</p> <p>15 A. Because Wendy had told me that she</p> <p>16 had switched with Lisa and Lisa didn't come in</p> <p>17 for work. And then I was questioned about it, I</p> <p>18 don't remember, by one of nurses, they had to</p> <p>19 erase the schedule and switch the names. And</p> <p>20 that's how I knew about that.</p> <p>21 You have to understand something,</p> <p>22 we did this all the time. I had a brother that</p> <p>23 was in a severe accident and I switched days</p> <p>24 with people. My brother got ran over by a semi</p>	<p>1 supposed to be there, my name's in the book and</p> <p>2 I switch with whoever, they are going to come</p> <p>3 after me and ask me why that was switched in the</p> <p>4 book. It sits on the nurse's station. If the</p> <p>5 nurse is in there giving medication, you don't</p> <p>6 know who's erasing or adding names.</p> <p>7 Q. Do you have any firsthand knowledge</p> <p>8 about what happened between Wendy Gauthier and</p> <p>9 Lisa Frank or is it just based on what you've</p> <p>10 been told by Wendy Gauthier?</p> <p>11 MR. SHEA: Objection.</p> <p>12 THE WITNESS: I know for a fact</p> <p>13 that they had switched on prior accounts.</p> <p>14 And to be honest with you, I don't know if</p> <p>15 this is relevant or whatever, but Lisa</p> <p>16 Franks has missed quite a bit of time, she</p> <p>17 would switch with people and then she</p> <p>18 wouldn't show up for work and said I'm not</p> <p>19 supposed to be working. That's why I would</p> <p>20 never switch with her again because it was</p> <p>21 a continuous thing with her.</p> <p>22 When I heard that Wendy got fired,</p> <p>23 I didn't understand, to be honest with you</p> <p>24 and said Lisa should have been fired months</p>

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1 ago because she would be a no call, no show
2 and she would say I wasn't on the schedule.
3 I'm just giving you my honest opinion about
4 that.

5 Q. (By Mr. Williams) That knowledge
6 is based on prior incidents, right, not the
7 particular one that Wendy Gauthier was
8 terminated for?

9 MR. SHEA: Objection.

10 THE WITNESS: I can't answer that
11 honestly because I don't know the dates.
12 This has been a while ago.

13 Q. (By Mr. Williams) Let me see if I
14 could put this topic, kind of boil it down to
15 the key points. That's simply what the source
16 of your knowledge for that particular incident
17 is.

18 Do you have any personal knowledge
19 or is this knowledge about there being a switch
20 scheduling between based just on what you were
21 told?

22 MR. SHEA: Objection. This is the
23 third time you've asked that. She's
24 already said that she actually witnessed

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1 testified earlier, what's the source of your

2 knowledge for that?

3 A. First, I don't know what particular
4 incident, I know of several incidents where they
5 would switch. I don't know this particular
6 incident. You know, you could ask me if it was
7 such and such a date, I can't tell you specific
8 dates. I've known they switched, she's switched
9 with me and I know what transpired between me
10 and Lisa Franks.

11 I've switched with Wendy, Wendy's
12 always showed up for me when we switched. If
13 she couldn't show up, she would call me and say
14 I can't make it there tonight, something's come
15 up, can you just go ahead and go in.

16 Q. Earlier this morning you had stated
17 that you had been informed that Wendy and Lisa
18 had arranged to switch and Lisa was supposed to
19 cover for Wendy and then Lisa didn't show up?

20 A. That was my understanding.

21 Q. I'm just wondering, what's that

22 understanding based on?

23 A. I don't know when we are talking

24 about. You are asking me a question and I'm

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1 the schedule being changed. She was
2 interviewed --

3 MR. WILLIAMS: I don't want a
4 speaking objection, first of all. I don't
5 want the answer coming from you. I'm not
6 hearing the same thing you are hearing.
7 Let me continue to explore this.

8 MR. SHEA: I think she's answered
9 it a few times.

10 MR. WILLIAMS: I'm just trying to
11 get a clear answer.

12 MR. SHEA: You are trying to get
13 the answer you want.

14 MR. WILLIAMS: I'm trying to get a
15 clear answer here and I'm going to ask you
16 not to make these speaking objections.

17 MR. SHEA: I think I've stated my
18 objection clearly.

19 Q. (By Mr. Williams) My question to
20 you is simply and I'm just trying to get a
21 simple little fact out here.

22 When we are talking about this one
23 time when Wendy Gauthier was terminated for, I
24 just want to know how you know what you

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1 telling you that this went on a lot. The
2 particular incident why they fired Wendy, I
3 don't know. I don't know what the reasoning was
4 behind it.

5 It's upsetting for me because you
6 want me to say something that I can't say. I'm
7 not happy with the company myself. I know what
8 the company put me through. I can't imagine
9 what they put a pregnant girl through. To be
10 honest with you, you know, I'm trying to be
11 telling you how I feel and it's very
12 frustrating, you know, to sit here and testify
13 for a company that I have no respect for at all.
14 That's just how I feel. You keep asking me this
15 particular incident, there's been several
16 incidents. I don't know.

17 We used to switch all the time is
18 what I'm telling you. I don't know this
19 particular incident caused Wendy to get fired.
20 I don't know.

21 Q. I'm not trying to get you to say
22 anything you don't know and what I'm trying to
23 make sure is we know what the source of what
24 you're saying is. I'm not trying to put any

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13 (Pages 46 to 49)

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1 words in your mouth. I want to make sure what
2 the source of what you are telling us is whether
3 you observed this firsthand?

4 A. I haven't been told. I worked with
5 Wendy, I worked with Lisa, I worked with several
6 people on third shift. I'm telling you know
7 that this went on for a long time. We used to
8 switch, it was never a problem.

9 I know after Wendy had got fired,
10 we had to start signing this piece of paper
11 which had to be okayed by whoever the director
12 of nursing was and the scheduler. It had to be
13 signed by the scheduler and signed by the
14 director of nursing before we would actually
15 switch.

16 And I forgot what the time period
17 was you couldn't just do it just like that. You
18 had to give them so much notice. I can't
19 remember when it was. It could be different by
20 now. I don't know.

21 Q. When was the last time you talked
22 to Wendy Gauthier?

23 A. The last time I worked with her,
24 which is I don't know how many years ago.

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1 recordkeeping there is atrocious. I can show
2 you documentation of an M2 testing that is good
3 until 2010, they are only good for a year or two
4 years. The documentation, I asked for all my
5 records, nobody seems to know where all the
6 records are. So I wouldn't put no importance on
7 anything to do with their recordkeeping. I know
8 from myself it was unacceptable. I had to call
9 New Mexico, Albuquerque, New Mexico because they
10 told me that I didn't have a legal right to my
11 records and I do.

12 I just want to put that in because
13 I'm not happy with the company itself. I know
14 how they handle paperwork. For me to keep my
15 CNA certification, I needed my inservices from
16 Sunbridge, they can't find any of them. Every
17 time we've ever done an inservice on third
18 shift, we get so many credits to keep our CNA
19 license. I can't do CNA work, but I needed
20 that credibility you have to have so many
21 credits to keep your CNA license. They don't
22 have them. I'm just letting you know this.

23 MR. WILLIAMS: Just note an
24 objection.

Page 47

1 Q. You haven't talked to her since she
2 was terminated?

3 A. No.

4 Q. Since Wendy was terminated, have
5 you talked to anybody else about her employment,
6 the termination of her employment?

7 A. To my attorney.

8 Q. Anybody other than your attorney?

9 A. Not that I'm aware of.

10 Q. When you talked to your attorney,
11 was it just you and your attorney or were there
12 other people there?

13 A. There was no other people there. I
14 remember going back to Sunbridge because I had
15 residents there that I cared very much for. And
16 when I was applying for a job, it was mentioned
17 to me about am I the one suing Sunbridge. So
18 apparently it must be the talk of the company.
19 I'll be honest with you and I go, no, I'm not
20 suing Sunbridge. And then they said it Wendy
21 Gauthier.

22 The facts and I don't know how
23 relevant this is, but I went back there for my
24 records, my personal records and the

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1 Q. (By Mr. Williams) Have you,
2 yourself, ever been in trouble for violating the
3 no call, no show policy?

4 A. Never.

5 Q. You were aware of what the no call,
6 no show policy was?

7 A. You don't show up for work, you get
8 terminated, I guess. I have always gone to work
9 every job I've ever been.

10 Q. How many years had you worked for
11 at Sunbridge?

12 A. I believe three years. I left one
13 time and then came back.

14 Q. During that three-year period, were
15 there other CNAs besides Wendy Gauthier who were
16 pregnant while working there?

17 A. Not that I'm aware of, no.

18 Q. You, yourself, don't work there
19 anymore, correct?

20 A. No.

21 Q. You explained a little bit about
22 after you were injured -- why don't you just
23 state for the record how your employment ended
24 there, clean statement of that?

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14 (Pages 50 to 53)

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1 A. I worked that particular day until
2 3:20 in the afternoon. My daughter used to help
3 in activities, I was answering the phone, giving
4 messages, writing messages down for people. I
5 was called in by the administrator, Michael Rose
6 at the time, took me in the office and told me
7 that I needed to go home. He didn't explain
8 why, nothing. I didn't know.

9 So I went home and I calmed down a
10 little bit because I was devastated. You got
11 three kids, a husband with a bad heart and they
12 tell you they no longer have a job for you.
13 Very upsetting.

14 Two weeks later, he called and said
15 I needed to come into the office. Now, you just
16 fired me or terminated me, however you want to
17 put it, make me drive back to Sunbridge to tell
18 me I no longer have a job. I figured that out
19 when I left at 3:20 in the afternoon. Sent me a
20 letter a week later saying we cannot provide a
21 job for you more or less.

22 Q. Was any other reason given for
23 ending your employment however you want to
24 describe it?

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1 A. Because I reached my maximum
2 medical improvement, I'm not going to get
3 better.

4 Q. You got an attorney who's
5 representing you currently in a case against
6 Sunbridge?

7 A. Yes.

8 Q. Briefly just describe the nature of
9 that case, what's the basic claim, the
10 underlying claim?

11 A. What do you mean the basic claim?

12 Q. What's the basic claim you are
13 bringing in that claim, what are you saying?

14 A. You'll have to talk to my attorney.
15 I ain't getting into no legal thing. Anything
16 to do with my worker's comp case, you'll have to
17 deal with my attorney. That has nothing to do
18 with this part of it. I'm not going to be on
19 record that's going to hurt myself.

20 Q. It is a worker's comp claim?

21 A. Yes, it is.

22 MR. WILLIAMS: I think that's all I
23 have?

24 MR. SHEA: I just have a couple

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1 quick questions. I will be brief.

2
3
4 FURTHER EXAMINATION BY MR. SHEA:

5
6 Q. You were injured and re-injured on
7 the job?

8 A. Yes, I was.

9 Q. In relation to your termination
10 date, do you recall approximately when you were
11 first injured on the job and then re-injured on
12 the job?

13 A. I was what?

14 Q. Do you recall the approximate time
15 frame when you first were injured in relation to
16 your termination, approximately how long?

17 A. I'm not very good with dates.

18 Q. If you had to approximate, would
19 you say six months?

20 A. When I returned to work and then
21 when I got re-injured again, it was in January
22 of '05.

23 Q. Was that the first injury?

24 A. That's the second injury.

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1 Q. When was the first prior to that?

2 A. I believe it was June 29th or July
3 29th, I'm not absolutely, I'm not very good on
4 dates.

5 Q. You were on light duty after the
6 second?

7 A. Two months later, I was on light
8 duty.

9 Q. After the second?

10 A. September, yeah.

11 Q. September of what?

12 A. '05, or '04, I'm not very good with
13 dates.

14 Q. Your end date was July of '05, your
15 termination date?

16 A. Right.

17 Q. So if we go back, you said you were
18 on light duty for about a year prior to your
19 termination?

20 A. I believe so.

21 Q. Is this helping you remember when
22 the first injury was?

23 A. It was June 29th of '04.

24 Q. And the second injury was January

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15 (Pages 54 to 57)

Page 54	Page 56
<p>1 of '05?</p> <p>2 A. Right.</p> <p>3 Q. Were you on light duty after the</p> <p>4 first injury?</p> <p>5 A. Yes.</p> <p>6 Q. Were you on light duty after the</p> <p>7 second injury?</p> <p>8 A. Yes.</p> <p>9 Q. Up to the time of your termination,</p> <p>10 were you on light duty?</p> <p>11 A. Yes.</p> <p>12 Q. During that whole time after that</p> <p>13 first injury to the time of your termination,</p> <p>14 you always had the position of CNA, the title?</p> <p>15 A. Yes.</p> <p>16 Q. You did handle some CNA</p> <p>17 responsibilities, correct, as well as light duty</p> <p>18 responsibilities during that time frame?</p> <p>19 A. Yes, right.</p> <p>20 Q. No one changed your position or</p> <p>21 gave you a new job after your first or second</p> <p>22 injury?</p> <p>23 A. No.</p> <p>24 Q. Up to the time of your termination?</p>	<p>1 A. Yes.</p> <p>2 Q. There was an incident that you did</p> <p>3 testify about earlier concerning Wendy Gauthier</p> <p>4 and Lisa Franks in a scheduling issue?</p> <p>5 A. Yes.</p> <p>6 Q. I believe you said you were</p> <p>7 questioned about it?</p> <p>8 A. Yes.</p> <p>9 Q. Were you questioned about one</p> <p>10 particular incident?</p> <p>11 A. I can't remember. I believe it was</p> <p>12 the director of nursing had questioned me about</p> <p>13 it. And I had told her at that time that I was</p> <p>14 there when they switched.</p> <p>15 Q. Who was the director of nursing?</p> <p>16 A. I think it was Anne Kendall.</p> <p>17 Q. It's just prior to Wendy Gauthier's</p> <p>18 termination?</p> <p>19 A. Yes, she was the director of</p> <p>20 nursing at the time.</p> <p>21 Q. She came to you and asked you about</p> <p>22 an incident where there was some confusion?</p> <p>23 A. She had asked me if Wendy and Lisa</p> <p>24 had switched. And I said they switched that</p>
Page 55	Page 57
<p>1 A. Right.</p> <p>2 Q. Debbie Laranger, she was on light</p> <p>3 duty?</p> <p>4 A. When I was on light duty, she</p> <p>5 wasn't there, she was out on workmen's comp.</p> <p>6 And when I left and I applied for the activities</p> <p>7 assistant job, she was working light duty.</p> <p>8 Q. How long was she working light</p> <p>9 duty?</p> <p>10 A. I have no idea. I mean, I had left</p> <p>11 the company. I don't know if they took her</p> <p>12 right back.</p> <p>13 Q. Where was she working light duty,</p> <p>14 what responsibilities?</p> <p>15 A. I'm not sure exactly. She probably</p> <p>16 was doing the same thing I do, helping the CNAs.</p> <p>17 Q. They didn't change her job title</p> <p>18 as far as you know?</p> <p>19 A. As far as I know, no.</p> <p>20 Q. Did they ever give Wendy Gauthier</p> <p>21 light duty at Sunbridge?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. You are aware she was asking for</p> <p>24 light duty, correct?</p>	<p>1 particular night. I don't know about any other</p> <p>2 night. I just know that night they had</p> <p>3 switched.</p> <p>4 Q. Focusing on that night, how do you</p> <p>5 know they switched?</p> <p>6 A. I was standing there when they were</p> <p>7 switching.</p> <p>8 Q. Shortly thereafter Wendy Gauthier</p> <p>9 was terminated, correct?</p> <p>10 A. I didn't do see Wendy, so I would</p> <p>11 imagine she was terminated. Nobody had said</p> <p>12 anything and I asked the nurse and she said she</p> <p>13 was no longer working for the company.</p> <p>14 Q. How long would you say, just</p> <p>15 approximate, I'm not asking for dates because I</p> <p>16 don't remember dates too well myself, how long</p> <p>17 after you being questioned by Anne Kendall and</p> <p>18 Wendy Gauthier's termination, how long would you</p> <p>19 say that time frame was, couple weeks, week?</p> <p>20 A. I believe it was, as far as I know,</p> <p>21 it was like, I forget which day it was, but I</p> <p>22 think it was the following week.</p> <p>23 Q. That she was terminated?</p> <p>24 A. I didn't know she was</p>

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16 (Pages 58 to 61)

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1 terminated.
 2 Q. You just never saw her again?
 3 A. I just never saw her again. I had
 4 asked, but they just told me that she no longer
 5 works there.
 6 Q. Do you remember who told you that?
 7 A. The director of nursing.
 8 Q. Anne Kendall?
 9 A. Yes.
 10 Q. Shortly after the termination?
 11 A. Right.
 12 Q. You say it's about a week between
 13 that incident and the termination?
 14 A. And I never seen her again, yes.
 15 Q. You never saw Wendy Gauthier commit
 16 any kind of no call, no show, correct?
 17 A. Not that I'm aware of, no.
 18 MR. SHEA: Thank you very much.
 19 MR. WILLIAMS: I have just one
 20 follow up.
 21
 22
 23 FURTHER EXAMINATION BY MR. WILLIAMS:
 24

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1 Q. Just on that last discussion you
 2 were having where Anne Kendall had asked you
 3 about whether or not there has been a switch, I
 4 think you said that you were there when they had
 5 made the switch?
 6 A. Yes.
 7 Q. Were you there when the two of them
 8 agreed to switch, can you just tell me what you
 9 mean by you were there?
 10 A. They needed to switch as far as I
 11 knew. You know what I'm saying, they agreed to
 12 switch.
 13 Q. You were there when they switched,
 14 were you there?
 15 A. Well, the nurse was erasing their
 16 names and switching to whatever day they were
 17 switching to.
 18 Q. You were there to see the nurse
 19 making the switch?
 20 A. Well, she was erasing it, I didn't
 21 stand there and make sure she was writing
 22 somebody's name. Like I was saying before, this
 23 was a normal practice.
 24 I remember a few times I had been

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1 there when, not Wendy, but another employee was
 2 supposed to show up, didn't show up from work
 3 and I got, I don't know how many patients 40, 50
 4 patients and they had to call the director of
 5 nursing in to help me because I can't do all
 6 them patients myself. But I had been there four
 7 or five hours with nobody but myself and a nurse
 8 to handle all these residents which makes it
 9 tough.
 10 Q. There's a safety issue if you don't
 11 have enough people there, correct?
 12 A. The place should have been shut
 13 down sometimes, there's no way you can take care
 14 of that many patients or residents with the
 15 nurse and a CNA.
 16 Q. I just want to go back and make
 17 sure I've got it clear. This will be the last
 18 question.
 19 You were there when the nurse was
 20 making some changes, you didn't actually see,
 21 but making some change in the scheduling book
 22 for a switch between Lisa Franks and Wendy?
 23 A. Exactly.
 24 Q. That was sometime shortly before

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1 she was terminated?
 2 A. Like I told you, we all switched
 3 all the time. I couldn't tell you if that was a
 4 particular. I know that one time before she got
 5 fired, they were switching and then the next
 6 thing you know, Wendy goes to the hospital, I no
 7 longer see her ever again. I mean, you know, I
 8 don't know if it was that particular time or
 9 another time. I can't say exactly.
 10 MR. WILLIAMS: That's all I have.
 11 MR. SHEA: I'm sorry, I have a
 12 couple more based on what he asked you.
 13
 14
 15 FURTHER EXAMINATION BY MR. SHEA:
 16
 17 Q. You do remember that the incident
 18 that you were questioned about by Anne Kendall
 19 related to the time that you saw the change
 20 being made in front of you in the book, right?
 21 A. Right.
 22 MR. WILLIAMS: Objection.
 23 Q. (By Mr. Shea) By the way, this
 24 procedure that you've described that you had for

KATHLEEN D. RAYMOND**January 24, 2007**

17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 switching time and changing the schedule up 2 until the time that Wendy Gauthier was 3 terminated, that was verbally explained to you, 4 it wasn't in any kind of writing or handbook? 5 A. I never seen anything in writing as 6 far as that procedure of switching days, it was 7 pretty lax around there for a while. 8 MR. SHEA: That's it. I'm all 9 set. 10 You have the right to read the 11 transcript that's going to be produced as a 12 result of this deposition for its accuracy. 13 THE WITNESS: Okay. 14 MR. SHEA: We can make arrangements 15 for you to do that, read and sign if you 16 want to or if you're confident that you 17 don't have any changes, you can waive the 18 reading and signing. 19 THE WITNESS: I would like it to 20 be sent to my attorney, if that's possible. 21 MR. SHEA: Okay. Just to be clear 22 for the record, you don't have an attorney 23 representing you regarding this matter as a 24 witness in this case?</p>	<p style="text-align: right;">Page 64</p> <p>1 I, ELISABETH ZAHARIADIS, a Notary Public 2 in and for the Commonwealth of Massachusetts, do 3 hereby certify that KATHLEEN D. RAYMOND appeared 4 before me, satisfactorily identified herself, on 5 the 24th day of January, 2007, at Worcester, 6 Massachusetts, and was by me duly sworn to 7 testify to the truth and nothing but the truth 8 as to her knowledge touching and concerning the 9 matters in controversy in this cause; that she 10 was thereupon examined upon her oath and said 11 examination reduced to writing by me; and that 12 the statement is a true record of the testimony 13 given by the witness, to the best of my 14 knowledge and ability. 15 I further certify that I am not a relative 16 or employee of counsel/attorney for any of the 17 parties, nor a relative or employee of such 18 parties, nor am I financially interested in the 19 outcome of the action. 20 WITNESS MY HAND this 6th day of February, 21 2007. 22 23 Elisabeth Zahariadis My Commission expires: 24 Notary Public October 5, 2012</p>
<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: No. 2 MR. SHEA: You mean Rickie Weiner, 3 your worker's compensation attorney? 4 THE WITNESS: Yes. 5 MR. SHEA: That's all I have. 6 7 (Deposition concluded at 10:58 a.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 65</p> <p>1 Today's date: February 6, 2007 2 To: Rickie T. Weiner, Esq. 3 Copied to: Michael O. Shea, Esq. 4 Michael Williams, Esq. 5 From: Elisabeth Zahariadis 6 Deposition of: Kathleen D. Raymond 7 Taken: January 24, 2007 8 Action: Gauthier V. Sunhealth 9 10 The above-described deposition has 11 been completed. Pursuant to the Rules of Civil 12 Procedure, Ms. Raymond has thirty days to sign 13 the deposition from today's date. 14 Please contact my office 15 immediately to schedule an appointment for Mr. 16 Raymond to come in and review the transcript and 17 sign the signature page within the next thirty 18 days. It will then be attached to the original 19 deposition transcript and a copy forwarded to 20 all parties with any addendum. 21 Thank you for your cooperation in 22 this matter. 23 24</p>

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18 (Pages 66 to 68)

Page 66		Page 68	
1	UNITED STATES DISTRICT COURT	1	
2	DISTRICT OF MASSACHUSETTS	2	
3		3	
4	*****	4	
5	WENDY GAUTHIER, *	5	
6	Plaintiff *	6	
7	vs. *No.: 05cv40119-FDS	7	
8	SUNHEALTH SPECIALTY *	8	
9	SERVICES, INC. and SUNBRIDGE*	9	
10	HEALTHCARE CORPORATION, *	10	
11	Defendants *	11	
12	*****	12	
13		13	
14		14	
15	I, KATHLEEN D. RAYMOND, do hereby certify,	15	
16	under the pains and penalties of perjury, that	16	
17	the foregoing testimony is true and accurate, to	17	
18	the best of my knowledge and belief.	18	
19	WITNESS MY HAND, this day of ,	19	
20	2007.	20	
21		21	
22	KATHLEEN D. RAYMOND	22	
23	EZ	23	
24		24	

Page 67	
1	CORRECTION SHEET
2	DEPONENT: Kathleen D. Raymond
3	CASE: Gauthier V. Sunhealth Specialty Services
4	DATE TAKEN: January 24, 2007
5	*****
6	PAGE/ LINE/ CHANGE OR CORRECTION AND REASON
7	*****
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24	____/____/____

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EXHIBIT 6

LISA FRANKS
February 8, 2007

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3

4

5 *****

6 WENDY GAUTHIER, *

7 Plaintiff *

8 vs. *No.: 05cv40119-FDS

9 SUNHEALTH SPECIALTY *

10 SERVICES, INC. and SUNBRIDGE *

11 HEALTHCARE CORPORATION, *

12 Defendants *

13 *****

14

15 TELEPHONE DEPOSITION OF: LISA FRANKS

16 CATUOGNO COURT REPORTING SERVICES

17 446 Main Street

18 Worcester, Massachusetts

19 February 8, 2007 4:21 p.m.

20

21

22

23 Elisabeth Zahariadis

24 Certified Shorthand Reporter

CATUOGNO COURT REPORTING SERVICES
Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI

LISA FRANKS
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2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF MICHAEL O. SHEA, P.C.</p> <p>5 451 Main Street</p> <p>6 Wilbraham, MA 01095</p> <p>7 BY: MICHAEL O. SHEA, ESQ.</p> <p>8 (413) 596-8005 FAX 596-8095</p> <p>9</p> <p>10 Representing the Defendant:</p> <p>11 LAWSON & WEITZEN, LLP</p> <p>12 88 Black Falcon Avenue</p> <p>13 Boston, MA 02210</p> <p>14 BY: K. SCOTT GRIGGS, ESQ.</p> <p>15 (617) 439-4990 FAX 439-3987</p> <p>16</p> <p>17 In attendance: Wendy Gauthier</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 MR. SHEA: I appreciate you doing</p> <p>2 this. I've got Attorney Griggs for</p> <p>3 SunBridge here and I've got Wendy Gauthier</p> <p>4 and the stenographer.</p> <p>5 MR. GRIGGS: Hello, Lisa.</p> <p>6 THE WITNESS: Hi.</p> <p>7 MR. SHEA: We're going to swear you</p> <p>8 in and stipulate on the record that you are</p> <p>9 who you are between the lawyers anyway.</p> <p>10</p> <p>11 LISA FRANKS, Deponent, having first been</p> <p>12 satisfactorily identified and duly sworn,</p> <p>13 deposes and states as follows:</p> <p>14</p> <p>15</p> <p>16 EXAMINATION BY MR. SHEA:</p> <p>17</p> <p>18 Q. Are you feeling okay today to</p> <p>19 answer some questions?</p> <p>20 A. Yeah, I'm feeling okay. I have the</p> <p>21 bug and stuff so.</p> <p>22 Q. You are not under the influence of</p> <p>23 any medication or anything which would affect</p> <p>24 your ability to answer questions?</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: LISA FRANKS</p> <p>4</p> <p>5 EXAMINATION BY: PAGE:</p> <p>6 Mr. Shea 4</p> <p>7 Mr. Griggs 24</p> <p>8</p> <p>9 EXHIBIT: PAGE:</p> <p>10 (none offered)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 A. No, I'm not.</p> <p>2 Q. I'll try to be brief and I</p> <p>3 appreciate you being available.</p> <p>4 As I said, I represent Wendy</p> <p>5 Gauthier in a case involving SunBridge and I</p> <p>6 just want to ask you a few questions about your</p> <p>7 employment there.</p> <p>8 A. Okay.</p> <p>9 Q. You were employed there as a CNA?</p> <p>10 A. Yes, I was.</p> <p>11 Q. Do you remember when you started</p> <p>12 your employment there?</p> <p>13 A. I believe I started there, I was on</p> <p>14 again off again for a few years there. I</p> <p>15 originally started working there 1992.</p> <p>16 Q. Were you working there in 2003 and</p> <p>17 2004?</p> <p>18 A. Yes, I was.</p> <p>19 Q. Are you still working there?</p> <p>20 A. No, I'm not.</p> <p>21 Q. Why did you leave there?</p> <p>22 A. I had an opportunity to further my</p> <p>23 education and my knowledge and I went into</p> <p>24 working at St. Vincent Hospital.</p>

LISA FRANKS
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3 (Pages 6 to 9)

Page 6	Page 8
<p>1 Q. Here in Worcester?</p> <p>2 A. Yes.</p> <p>3 Q. How old are you?</p> <p>4 A. 37.</p> <p>5 Q. Where do you currently reside?</p> <p>6 A. 19 Vine Street, Oxford,</p> <p>7 Massachusetts.</p> <p>8 Q. How long have you lived there?</p> <p>9 A. I've been here 10 years now.</p> <p>10 Q. Over how many years were you</p> <p>11 employed as a CNA at SunBridge?</p> <p>12 A. I was there from '92 to December of</p> <p>13 '05 I believe it was.</p> <p>14 Q. You left there voluntarily you</p> <p>15 said?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever receive a warning or</p> <p>18 any kind of reprimand there?</p> <p>19 A. No, not that I recall.</p> <p>20 Q. Did SunBridge or Sandalwood have a</p> <p>21 no call/no show policy of some kind?</p> <p>22 A. Yes, they did.</p> <p>23 Q. Can you tell me what you remember</p> <p>24 about that policy?</p>	<p>1 out if you wanted to switch times, if you want</p> <p>2 to work for somebody or somebody needed to work</p> <p>3 for you, you needed to fill out a form of some</p> <p>4 kind.</p> <p>5 Q. You said usually, are there</p> <p>6 occasions when you notified the scheduler</p> <p>7 verbally of a time swap?</p> <p>8 A. I don't recall.</p> <p>9 Q. Is there some policy that talked</p> <p>10 about how to switch time with another CNA</p> <p>11 between CNAs that you recall or no?</p> <p>12 A. I honestly don't recall right now.</p> <p>13 This was a few years back. I don't recall all</p> <p>14 the policies right now.</p> <p>15 Q. Did you ever switch time, change</p> <p>16 your schedule and swap time with Wendy Gauthier?</p> <p>17 A. I honestly don't recall, but I may</p> <p>18 have.</p> <p>19 Q. Do you know why she was terminated?</p> <p>20 Do you know that she was terminated from</p> <p>21 Sandalwood or SunBridge?</p> <p>22 A. Yes, I do. She was terminated and</p> <p>23 I understand that during that time I guess she</p> <p>24 was pregnant and she was having complications</p>
Page 7	Page 9
<p>1 A. I do know if you are scheduled to</p> <p>2 work on a certain day or shift and you do not</p> <p>3 show up there, I don't recall what their total</p> <p>4 policy is what they do for the first offense,</p> <p>5 but they do reprimand you.</p> <p>6 Q. Who was your supervisor in '03 and</p> <p>7 '04? Ann Kendall?</p> <p>8 A. I can't remember right now. I know</p> <p>9 Ann Kendall was one. I'm trying to think who</p> <p>10 else was there. They switched over so often.</p> <p>11 Ann Kendall was one I know.</p> <p>12 Q. If you remember the other one, can</p> <p>13 you just let me know?</p> <p>14 A. His first name is Mike, but I don't</p> <p>15 remember his last name.</p> <p>16 Q. As a CNA, did you have occasion to</p> <p>17 change your schedule from time to time?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did you ever switch time with any</p> <p>20 other CNAs?</p> <p>21 A. Yeah, I had.</p> <p>22 Q. Can you tell me how that process</p> <p>23 was undertaken?</p> <p>24 A. Usually there was a form you fill</p>	<p>1 with her pregnancy and she had called in a few</p> <p>2 times. I don't know. I don't recall how many</p> <p>3 times, but I do know that she was having</p> <p>4 problems with her pregnancy at the time.</p> <p>5 Q. Do you recall what those</p> <p>6 complications were?</p> <p>7 A. I really don't know. I can't</p> <p>8 recall what they were. She was having pressure</p> <p>9 or what it was.</p> <p>10 MR. GRIGGS: I'll object to the</p> <p>11 form of the question. Insufficient basis</p> <p>12 for her to make that observation.</p> <p>13 Q. (By Mr. Shea) Did she have swollen</p> <p>14 feet and legs?</p> <p>15 MR. GRIGGS: Same objection.</p> <p>16 THE WITNESS: Honestly, I can't</p> <p>17 recall if she did or not at this point.</p> <p>18 I'm sorry.</p> <p>19 Q. (By Mr. Shea) That's okay. How</p> <p>20 often did you work alongside Wendy Gauthier?</p> <p>21 A. I don't know. I'd say maybe two</p> <p>22 times a week or so.</p> <p>23 Q. Full shifts?</p> <p>24 A. Yeah.</p>

CATUOGNO COURT REPORTING SERVICES

Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI

LISA FRANKS**February 8, 2007**

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 Q. Which shift did you work, did you 2 work a usual shift? 3 A. Basically 11:00 at night until 7:00 4 in the morning. 5 Q. Did you ever happen to commit a no 6 call/no show? 7 A. No, I don't believe I did. 8 Q. You said you don't recall any 9 employee that committed a no call/no show? 10 A. Right. 11 Q. Do you have a specific 12 recollection of swapping time with Wendy 13 Gauthier? 14 A. I don't have a specific time, no. 15 I'm sorry. 16 Q. Do you think you may have swapped 17 time with her or change your schedule where you 18 were covering for her or vice versa on more than 19 one occasion? 20 A. I don't recall. If she asked me 21 and we fill out a form, then yeah, I probably 22 did. I honestly don't recall. 23 Q. Do you recall whether you ever 24 swapped time with Wendy Gauthier where a form</p>	<p>1 yes. 2 Q. (By Mr. Shea) She was a hard 3 worker? 4 A. Yes. 5 Q. Do you remember her getting injured 6 on the job? 7 A. That, I honestly don't recall. 8 Q. You do recall something about 9 pregnancy complications? 10 A. Right. 11 Q. A need to take time off for those 12 complications? 13 A. Yes. 14 Q. Do you know anything more about 15 that subject matter than what you may have 16 already said? 17 A. No, not that I can recall. 18 MR. SHEA: Can we leave you on the 19 phone for one minutes, Ms. Franks. 20 THE WITNESS: Yes. 21 MR. SHEA: I may be done, I just 22 want to step out of the room and talk to my 23 client real quick and then I'll be right 24 back in.</p>
Page 11	Page 13
<p>1 was not filled out and the request was made 2 verbally and noted by the scheduler? 3 A. I don't recall that, honestly. 4 Q. It could have happened, you just 5 may not recall right now? 6 MR. GRIGGS: Asked and answered. 7 Objection. 8 Q. (By Mr. Shea) Pardon me? 9 MR. GRIGGS: I'll object to the 10 question. Asked and answered. 11 Q. (By Mr. Shea) What was your 12 answer? 13 A. I honestly don't recall, but may 14 have. 15 Q. (By Mr. Shea) As far as you know, 16 was Wendy Gauthier a good employee at SunBridge? 17 MR. GRIGGS: Objection. 18 THE WITNESS: Yes, she was. She 19 was a good employee. 20 Q. (By Mr. Shea) Did she have a good 21 working relationship with others as far as you 22 know? 23 MR. GRIGGS: Same objection. 24 THE WITNESS: I believe she has,</p>	<p>1 THE WITNESS: Okay. 2 MR. SHEA: Thank you. 3 4 (A recess was taken) 5 6 MR. SHEA: Back on the record. 7 Q. (By Mr. Shea) Lisa, it's Mike 8 Shea again. 9 A. Okay. 10 Q. Did you have any conversation with 11 anyone about today's deposition? 12 A. No, I haven't, just my husband. 13 Q. What conversation did you have with 14 him? 15 A. I just had told him that I was 16 supposed to go to a deposition about something 17 that had happened with a former coworker I used 18 to work with. 19 Q. Did he know who she was? 20 A. No, he has no clue. And I didn't 21 even say who the person was. 22 Q. Was it fairly common practice to 23 swap time among CNAs? 24 A. On occasion, yeah.</p>

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LISA FRANKS
February 8, 2007

5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 Q. But it wasn't uncommon, correct?</p> <p>2 A. Right.</p> <p>3 Q. You could do that verbally as well</p> <p>4 as in writing, correct?</p> <p>5 A. Well, they really wanted, they</p> <p>6 expected you to fill out a form, but there were</p> <p>7 instances I believe that may have happened.</p> <p>8 Q. Did anyone to your knowledge get</p> <p>9 reprimanded if they asked for time off or time</p> <p>10 swapped?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Verbally?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you know why Wendy Gauthier was</p> <p>15 terminated?</p> <p>16 A. I don't know. I heard at that</p> <p>17 time, I remember hearing different reasons why</p> <p>18 because she was calling out too much and they</p> <p>19 didn't think she was up to doing her job the way</p> <p>20 she should have been doing it.</p> <p>21 Q. Was somebody telling you this?</p> <p>22 A. What?</p> <p>23 Q. Was someone telling you that she</p> <p>24 wasn't up to doing her job?</p>	<p style="text-align: right;">Page 16</p> <p>1 A. I really don't.</p> <p>2 Q. Did somebody tell you why she was</p> <p>3 terminated?</p> <p>4 A. No, they just said that she was</p> <p>5 calling out an awful lot.</p> <p>6 Q. Who said that, do you know?</p> <p>7 A. One of the nurses that I had worked</p> <p>8 with. I don't recall her name. If it was</p> <p>9 Debbie or if it was another nurse.</p> <p>10 Q. Do you know who terminated Wendy</p> <p>11 Gauthier's employment?</p> <p>12 A. No, I don't recall that, I'm sorry.</p> <p>13 Q. Did you have any conversation with</p> <p>14 anyone other than your husband about this case?</p> <p>15 A. No, I haven't.</p> <p>16 Q. No lawyers?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did you talk to anyone at</p> <p>19 SunBridge because you were there after Wendy</p> <p>20 Gauthier was gone, right?</p> <p>21 A. Yes, I was.</p> <p>22 Q. Did you talk to anyone after Wendy</p> <p>23 Gauthier was terminated as to the reasons for</p> <p>24 her termination?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. I recall somebody telling me, but I</p> <p>2 don't recall the person's name right now at this</p> <p>3 point who had said it.</p> <p>4 Q. You said you worked alongside Wendy</p> <p>5 Gauthier?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Couple days a week on average?</p> <p>8 A. Yes, I never had a problem working</p> <p>9 with her.</p> <p>10 Q. Did she ever have a problem working</p> <p>11 up to their standards to your knowledge?</p> <p>12 A. Not that I know of, no.</p> <p>13 Q. Do you have an understanding, I</p> <p>14 know I asked you this, but I'd like to delve</p> <p>15 into your knowledge, if any, about the reasons</p> <p>16 why Ms. Gauthier was told she was being</p> <p>17 terminated. Do you have an understanding of</p> <p>18 that?</p> <p>19 MR. GRIGGS: Objection. The</p> <p>20 question is calling for state of mind of</p> <p>21 someone else.</p> <p>22 THE WITNESS: Do I have an</p> <p>23 understanding of that?</p> <p>24 Q. (By Mr. Shea) Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I had just asked because I just</p> <p>2 noticed she wasn't on the schedule anymore and I</p> <p>3 was curious. And they said, just one of the</p> <p>4 nurses had stated that she thought she got</p> <p>5 terminated because of her call outs.</p> <p>6 Q. No one ever told you she was</p> <p>7 terminated for a no call/no show, is that fair</p> <p>8 to say?</p> <p>9 A. No, not that I recall.</p> <p>10 Q. Do you know how early on in her</p> <p>11 employment at SunBridge she began having</p> <p>12 complications with her pregnancy?</p> <p>13 A. That, I don't recall. I'm sorry.</p> <p>14 Q. Let me ask you about this form</p> <p>15 that you are talking about where the CNA uses a</p> <p>16 form that asks for time off or switch time with</p> <p>17 another CNA.</p> <p>18 Do you recall using that form</p> <p>19 every time you switched time or no?</p> <p>20 A. I honestly don't recall if I signed</p> <p>21 it every time. I know I did sign it most of the</p> <p>22 time.</p> <p>23 Q. Can you walk through the process,</p> <p>24 where do you get this form from and what did it</p>

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LISA FRANKS**February 8, 2007**

6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 say?</p> <p>2 A. They were like a collection basket</p> <p>3 type that it had all the forms in there, it was</p> <p>4 like in a cubby hole in the hallway and you</p> <p>5 could go there and just take it and fill it out</p> <p>6 and then it would have to be okayed by the</p> <p>7 supervisor.</p> <p>8 Q. Who were the supervisors at the</p> <p>9 time that you and Wendy Gauthier worked there?</p> <p>10 A. I'm not positively sure, but I</p> <p>11 believe it may have been Ann Kendall at that</p> <p>12 time.</p> <p>13 Q. Was there a supervisor Donna that</p> <p>14 you remember or no?</p> <p>15 A. I do remember a Donna, but I don't</p> <p>16 know exactly what time frame she was there at.</p> <p>17 If it was during that time frame or a different</p> <p>18 one.</p> <p>19 Q. What was her title, was she a</p> <p>20 nurse?</p> <p>21 A. She was a nurse, but she was higher</p> <p>22 up. I don't know if she was assistant director</p> <p>23 of nursing or if she was.</p> <p>24 Q. Was she a scheduler?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I honestly don't recall.</p> <p>2 Q. Is it fair to say that as long as</p> <p>3 the CNA who's looking to get coverage and change</p> <p>4 their schedule, as long as they get a commitment</p> <p>5 from the other CNA who is going to take their</p> <p>6 place, is that sufficient?</p> <p>7 MR. GRIGGS: Objection to the form.</p> <p>8 THE WITNESS: To me it would be.</p> <p>9 Q. (By Mr. Shea) Under the practices</p> <p>10 at SunBridge, was that sufficient in your view?</p> <p>11 MR. GRIGGS: Objection again.</p> <p>12 Q. (By Mr. Shea) You can answer.</p> <p>13 A. Yes, I guess so.</p> <p>14 Q. You followed their procedures at</p> <p>15 SunBridge?</p> <p>16 A. Yes.</p> <p>17 Q. You were never given a warning or</p> <p>18 spoken to about a no call/no show issue?</p> <p>19 A. I don't recall getting one, no.</p> <p>20 Q. Were you ever spoken to about</p> <p>21 Wendy Gauthier committing a no call/no show?</p> <p>22 A. I honestly don't recall that. I'm</p> <p>23 sorry.</p> <p>24 Q. Ann Kendall never came to you to</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Honestly, I don't recall that.</p> <p>2 Q. When you filled this form out, you</p> <p>3 drop it in basket somewhere you said?</p> <p>4 A. Yes.</p> <p>5 Q. Who takes the form or what do they</p> <p>6 do with it?</p> <p>7 A. Usually put it in the basket and</p> <p>8 then the following day the supervisor would take</p> <p>9 it or the scheduler and from that point on, they</p> <p>10 would go through and approve it or the scheduler</p> <p>11 would change the schedule if need be.</p> <p>12 Q. If the time change was approved,</p> <p>13 would that be noted somewhere?</p> <p>14 A. Yes, I believe so.</p> <p>15 Q. By whom and on what document?</p> <p>16 A. It would be approved by the</p> <p>17 supervisor or I believe the scheduler was in</p> <p>18 charge of putting the difference in on the</p> <p>19 schedule.</p> <p>20 Q. Did the scheduler have authority to</p> <p>21 approve time swap such as this?</p> <p>22 A. I don't recall that.</p> <p>23 Q. Is that possible, you just don't</p> <p>24 recall?</p>	<p style="text-align: right;">Page 21</p> <p>1 your knowledge and asked you about switching</p> <p>2 time with Wendy Gauthier, is that fair to say?</p> <p>3 A. Right.</p> <p>4 Q. Steve Copper never came to you</p> <p>5 about switching time with Wendy Gauthier or a no</p> <p>6 call/no show, correct?</p> <p>7 A. Correct.</p> <p>8 Q. To your knowledge, was there</p> <p>9 anything in writing in terms of policies or</p> <p>10 procedures concerning switching time with</p> <p>11 another CNA?</p> <p>12 A. I'm sorry, can you repeat that</p> <p>13 question?</p> <p>14 Q. Were there any written policies or</p> <p>15 procedures at Sandalwood SunBridge relating to</p> <p>16 switching time with another CNA as we have been</p> <p>17 talking about?</p> <p>18 A. I believe there was. I just don't</p> <p>19 recall the whole entire policy itself, but I</p> <p>20 believe there was a policy for switching time.</p> <p>21 Q. Do you know what it said?</p> <p>22 A. I don't recall, honestly.</p> <p>23 Q. Were you ever given a copy of such</p> <p>24 a policy or do you know?</p>

CATUOGNO COURT REPORTING SERVICES**Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI**

LISA FRANKS
February 8, 2007

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 A. It was a long time ago when I 2 stopped working there. I basically threw out 3 all the policies because I don't work there 4 anymore and I don't plan on going back there to 5 work. 6 Q. Did you leave there on good terms? 7 A. I believe I did. 8 Q. When you say a long time ago, how 9 long ago was this policy that you saw concerning 10 switching time? 11 A. It was back in '03 is when I 12 actually read it. 13 Q. Where was that, where did you read 14 it? 15 A. I had it at my house in the policy 16 handbook. 17 Q. It's in the company handbook? 18 A. I believe it is, yes. 19 Q. Did you get a copy of the company 20 handbook? 21 A. I did, but like I said, I no longer 22 have that handbook. 23 Q. I understand. But at some point, 24 you did get a copy of the company handbook?</p>	<p>1 A. I may have, but I don't honestly 2 recall. 3 MR. SHEA: I don't have anything 4 further. 5 6 7 EXAMINATION BY MR. GRIGGS: 8 9 Q. Lisa, you know who I am 10 representing SunBridge, right? Are you still 11 there? 12 A. Yes, I'm here, sorry. 13 Q. Have you ever agreed verbally or in 14 writing to show up for somebody else's shift and 15 failed to show up? 16 MR. SHEA: Objection. 17 THE WITNESS: No. 18 Q. (By Mr. Griggs) Have you ever 19 failed to show up for a shift for which you were 20 scheduled by any means? 21 MR. SHEA: Objection. 22 THE WITNESS: I don't recall, no. 23 Q. (By Mr. Griggs) Before, you said 24 it was your understanding that there was a</p>
Page 23	Page 25
<p>1 A. Yes. 2 Q. You think there's a policy and 3 procedure in there about switching time with 4 another CNA? 5 A. I don't recall. Their handbooks 6 have probably changed since then. 7 Q. I'm talking about back then? 8 A. Back then, I believe there was. 9 Q. You don't remember what it says? 10 A. I honestly don't recall. No, I'm 11 sorry, that was a few years ago. 12 Q. You don't recall whether it said 13 you had to switch time in writing or anything 14 like that, right? 15 A. I don't recall it, no. 16 Q. If fact, other CNAs would switch 17 time with their coworkers on a verbal request, 18 correct? 19 MR. GRIGGS: Objection. Calls for 20 speculation. 21 THE WITNESS: I honestly don't 22 recall, I'm sorry. 23 Q. (By Mr. Shea) Did you ever switch 24 time on a verbal agreement with Wendy Gauthier?</p>	<p>1 policy that you had to fill out a form in 2 writing to request a shift swap; is that 3 correct? 4 A. I believe so. 5 MR. GRIGGS: I think I have no 6 further questions. 7 MR. SHEA: Nothing further. 8 9 (Deposition concluded at 4:47 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

LISA FRANKS

February 8, 2007

8 (Pages 26 to 29)

Page 26

1 I, ELISABETH ZAHARIADIS, a Notary Public
 2 in and for the Commonwealth of Massachusetts, do
 3 hereby certify that LISA FRANKS satisfactorily
 4 identified herself, on the 8th day of February,
 5 2007, at Worcester, Massachusetts, and was by me
 6 duly sworn to testify to the truth and nothing
 7 but the truth as to her knowledge touching and
 8 concerning the matters in controversy in this
 9 cause; that she was thereupon examined upon her
 10 oath and said examination reduced to writing by
 11 me; and that the statement is a true record of
 12 the testimony given by the witness, to the best
 13 of my knowledge and ability.

14 I further certify that I am not a relative
 15 or employee of counsel/attorney for any of the
 16 parties, nor a relative or employee of such
 17 parties, nor am I financially interested in the
 18 outcome of the action.

19 WITNESS MY HAND this 3rd day of March
 20 2007.

23 Elisabeth Zahariadis My Commission expires:
 24 Notary Public October 5, 2012

Page 27

1 Today's date: March 3, 2007
 2 To: K. Scott Griggs, Esq.
 3 Copied to: Michael O. Shea, Esq.
 4 From: Elisabeth Zahariadis
 5 Deposition of: Lisa Franks
 6 Taken: February 8, 2007
 7 Action: WENDY GAUTHIER
 8 Vs. SUNHEALTH SPECIALTY
 9 SERVICES, INC., ET AL.

12 Enclosed is a copy of Ms. Franks's
 13 deposition. Pursuant to the Rules of Civil
 14 Procedure, Ms. Franks has thirty days to sign
 15 the deposition from today's date.

16 Please have Ms. Franks sign the enclosed
 17 signature page. If there are any errors, please
 18 have her mark the page, line and error on the
 19 enclosed correction sheet. She should not mark
 20 the transcript itself. This addendum should be
 21 forwarded to all interested parties.

22 Thank you for your cooperation in this
 23 matter.

24

Page 28

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

5 *****
 6 WENDY GAUTHIER, *
 7 Plaintiff *
 8 vs. *No.: 05cv40119-FDS
 9 SUNHEALTH SPECIALTY *
 10 SERVICES, INC. and SUNBRIDGE*
 11 HEALTHCARE CORPORATION, *
 12 Defendants *

13 *****

16 I, LISA FRANKS, do hereby certify,
 17 under the pains and penalties of perjury, that
 18 the foregoing testimony is true and accurate, to
 19 the best of my knowledge and belief.
 20 WITNESS MY HAND, this day of
 21 2007.

23 LISA FRANKS

24 EZ

Page 29

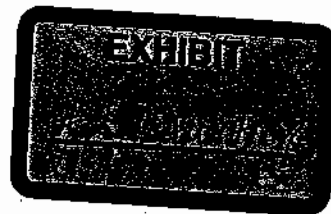
1 CORRECTION SHEET
 2 DEPONENT: Lisa Franks
 3 CASE: Gauthier V. Sunhealth Specialty Services
 4 DATE TAKEN: February 8, 2007
 5 *****
 6 PAGE/ LINE/ CHANGE OR CORRECTION AND REASON
 7 *****
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Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, RI

EXHIBIT 7

Medical File

Primary Care
Physicians

Lester P. Mietkiewicz, M.D.

PRIMARY CARE PHYSICIANS

28 GRAFTON COMMON • GRAFTON, MA 01519 • (508) 839-5391

Date

12/31/03

For M

Wendy Gantner

Street

Town

State

DOB

Clinic M/R Number

Wendy was seen today for
an employment examination.
She is 12 wks pregnant
and has heavy lifting

Repetitor	NEW RX - STARTER SUPPLY								
NON	1	2	3	4	5	6	7	8	YEAR

SIGNATURE

Intelligence is mandatory. The
prescriber writes the words "no
substitution" in this space.

29-96,558

is suggested

DEA

R.Ph.

12/22/03 - 5/25/04

was 11 wks
preg. at time.

01/12/2004 16:41

5083636206

DRS FARRICY KRAFT

PAGE 01

EXHIBIT

OBSTETRICS & GYNECOLOGYJohn P. Farricy, M.D., F.A.C.O.G.
Susan L. Kraft, M.D., F.A.C.O.G.20 Worcester Center Blvd.
Suite 587, 5th Floor, North
Worcester, MA 01608Office (508) 363-6100
Fax (508) 363-6206JTTN:
ANNE

January 12, 2004

To Whom It May Concern,

Wendy Gauthier is a patient under my care for her pregnancy. I am recommending that she be able to work and lift with the assistance of another co-worker. Any questions regarding this matter, please call the office. Thank you.

Sincerely,

Dr. John Farricy



Drs. Farricy & Kraft, LLP

01/26/2004 15:18

b083636206

DRS FARRICY KRAFT

PAGE 01

OBSTETRICS & GYNECOLOGY

John P. Farricy, M.D., F.A.C.O.G.
Susan L. Kraft, M.D., F.A.C.O.G.

20 Worcester Center Blvd.
Suite 587, 5th Floor, North
Worcester, MA 01608

Office (508) 363-6100
Fax (508) 363-6206

ATTN: Anne

Kendall

January 26, 2004

To Whom It May Concern,

Wendy Gauthier was seen in my office today.

It is my recommendation that she be able to

continue working and lifting with caution.

Any questions regarding this matter, please call the

office. Thankyou

Sincerely,

Dr. John Farricy

Drs. Farricy & Kraft, LLP

FEB-22-2007 11:27

LAWSON & WEITZEN

SHEA LAW OFFICE

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02/22/2007 11:20

4135968095

OBSTETRICS & GYNECOLOGY

John P. Farricy, M.D., F.A.C.O.G.
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May 6, 2004

COPY

CONFIDENTIAL

To Whom It May Concern,

Wendy Gauthier is a patient under my care and was
seen in the office today. It is my recommendation
that she be able to perform her duties as
usual at work. Any questions regarding this
matter, please call the office. Thankyou

Sincerely,

Dr. John Farricy

Drs. Farricy & Kroft, LLP

EXHIBIT 8

PERFORMANCE IMPROVEMENT PLANName [REDACTED] Job Title CNA Facility SandalwoodNature of Concern: ☒ Absenteeism ☐ Dress Code ☒ Behavior ☐ Performance
☒ Tardiness ☐ Other (describe) _____

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: _____

Specific Description of Issue, Situation or Behavior (what, where, how): you have been① late for work 37 x in 2 1/2 Months.② Your Attitude toward your Job isvery neg. You don't take any directivesfrom charge nurses or supervisor withoutchallenging them. Come back from breaks lateImmediate and Continued Change Needed for Success: Stop being late -this affect the staff morale as well asResidents care.Action Taken ☒ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☒ ~~Written Notice~~ (Date) _____ and return to work on _____
☐ Termination (Date) _____**Further performance problems of any kind may lead to further corrective action up to and including termination of employment.**

Employee Comments: _____

Grace Shiffert 7/9/03
Supervisor's Signature DateW. Haddad 7/28/03
Dept. Head/Administrator DateEmployee's Signature _____ Date _____
☒ Employee Refused to Sign - Requires Witness Signature MA
Maurice Perry RN 7/7/03
Witness Signature Date

Copy to Personnel File (White) Employee (Canary) Supervisor (Pink)

HR 407A

SANDALWOOD

RECORD OF COUNSELING

Date: 3-1-04Employee Name: [REDACTED]

Employee #: _____

Department: NSG

Location: _____

☐ Verbal☒ Written☐ Final Written Warning☐ Termination

Dates and types of prior disciplinary actions or counseling:

(1st Prior) _____

(1st Prior) _____

(1st Prior) _____

Description of current specific behavior/performance requiring counseling: _____

Misconduct #: _____

Gross Misconduct #: _____ (If applicable)

Corrective action to be taken by employee: Excuse AbsentEmp will not be Absent next 90 Days.

Description of current specific behavior/performance requiring termination: _____

Failure to correct and sustain the performance and/or behavior required by the date(s) indicated above will result in appropriate disciplinary action up to and including termination of employment.

Employee remarks: _____

My signature indicates that the above issue(s) was/were discussed with me, not that I necessarily agree with the contents of this Record of Counseling.

Employee

Date

Supervisor

Date

Next Level Management

Date

Witness

Date

HUMAN RESOURCES POLICY AND PROCEDURE MANUAL – HR 407

Sun Healthcare Group, June 2002

Section - Forms

Page 1 of 1

ABSENCE REPORT

Name  Date 6/14/04 Time _____
Department _____

WAS ABSENT FROM WORK TODAY

- ☐ Illness
- ☐ Injury
- ☐ Vacation
- ☐ Approved Leave
- ☐ Unknown

Remarks: No call
No show

Supervisor's Signature *Patricia Goodrich Jr.*
Form 519 BRIGGS, Des Moines, IA 50306 (800) 247-2343
PRINTED IN U.S.A. ABSENCE REPORT

ABSENCE REPORT

Name [REDACTED] Date 6.27.04 Time

Department msg

WAS ABSENT FROM WORK TODAY

☐ Illness

☐ Vacation

☐ Unknown

☒ Injury

☐ Approved Leave

Remarks: No call / No show

Called her at 7:40pm - states she

resigned & on personal days states

nothing & done

Supervisor's Signature [Signature]

EXHIBIT 9



HR 407A

SunBridge Sandalwood

RECORD OF COUNSELING

Employee Name: [REDACTED] Date: 9-6-05Employee #: [REDACTED] Position: CNADepartment: Nursing Location: _____

Dates of prior disciplinary actions of counseling within the last 12 months:

Verbal counseling: _____ First written warning: X Final written warning: ✓

Type* and description of current specific behavior/performance/conduct requiring counseling (including actions and completion dates agreed upon to correct problem(s); indicate employee reactions, commitments, etc.):

*excessive absenteeism
(see attached)
3 absence occurrences in a 90 day period.*

* Type of current disciplinary action taken (e.g. Misconduct, rule #18)

Type of current disciplinary action taken:

X First Written Warning _____ Final Written Warning _____ Discharge _____

_____ Investigative Suspension

Employee Comments:

Spoke to [REDACTED] reviewed policy. per next call out will be immediate termination.

Any further violations of company policy, or continued performance problems either related or unrelated to the above will result in further disciplinary action up to, and including, discharge. Violations of different rules are cumulative.

My signature indicates that I have received this written warning and the above issues were discussed with me, but does not indicate that I am in agreement with the above statement(s).

Employee

Date

Supervisor

Date

Next Level Management

Date

Witness

Date

DATE	CALLED OUT	TARDY	VACATION	OTHER
7/27/2005	Illness for Family			
8/8/2005				Babysitter called in
8/23/2005				No Call No Show
8/25/2005	Illness for Family			
9/4/2005	Called Out			

5 call outs since date of hire 7/15/05

DATE	CALLED OUT	TARDY	VACATION	OTHER
7/27/2005	Illness for Family			
8/8/2005				Babysitter called in
8/23/2005				No Call No Show
8/25/2005	Illness for Family			
9/5/2005	Illness for Self			
9/6/2005		1/2 Hour		
9/13/2005				No Call No Show

EXHIBIT 10

PERFORMANCE IMPROVEMENT PLAN

Name [REDACTED] Job Title CNA Facility Sundewood

Nature of Concern: ☐ Absenteeism ☐ Dress Code ☐ Behavior ☐ Performance
☐ Tardiness ☐ Other (describe) _____

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: _____

Specific Description of Issue, Situation or Behavior (what, where, how): _____

irradict behavior - lying in bed & pt - "consoling pt"
 strong smell of alcohol on breath - eyes very
 glassy - ~~the future~~ RN Employee refused alcohol testing
 + offer of employee assistance. Employee chose to leave of
 her own accord.

Immediate and Continued Change Needed for Success: _____

This is a repeat behavior of Nov. 21 - Behavior
 inappropriate + strong odor of alcohol - Urinary on keft
 + while using Breakfast Cart - Crawled into wall + then walked
 away.

Action Taken ☐ Documented Verbal Notice ☒ Suspension for 1 days to start on
☐ Written Notice (Date) 12/1/03 and return to work on
☐ Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: _____

[Signature] 12-1-03
 Supervisor's Signature Date

Employee's Signature _____ Date
☒ Employee Refused to Sign - Requires Witness Signature

[Signature]
 Dept. Head/Administrator Date

Witness Signature _____ Date

PERFORMANCE IMPROVEMENT PLANName [REDACTED] Job Title CNA Facility SandalwoodNature of Concern: ☒ Absenteeism ☐ Dress Code ☐ Behavior ☐ Performance
☒ Tardiness ☐ Other (describe) _____

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: 5/3/03 6/25/03Specific Description of Issue, Situation or Behavior (what, where, how): Within a period
of 2 1/2 months your attendance
is poor. 11 x's. you have been late.
from your scheduled time.Immediate and Continued Change Needed for Success: ① Stop being late.
② Stop calling out. ③ Report to work
promptly after your break - to ensure
the residents are getting quality careAction Taken ☒ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☐ Written Notice (Date) _____ and return to work on _____
☐ Termination (Date) _____**Further performance problems of any kind may lead to further corrective action up to and including termination of employment.**Employee Comments: _____

_____G. Washburn 7/10/07
Supervisor's Signature DateW. Hadden 7/28/03
Dept. Head/Administrator Date[REDACTED] Date
Employee Signature☐ Employee Refused to Sign - Requires Witness SignatureTheresa Mason _____
Witness Signature Date

Copy to Personnel File (White)

Employee (Canary)

Supervisor (Pink)

EMPLOYEE COUNSELING FORMDATE: 8/20/96EMPLOYEE: [REDACTED]

PROBLEM:

[REDACTED] came in late & then became upset when she wasn't allowed to stop sounds & start her assignment right away but was asked to do residents that needed to be done before breakfast. [REDACTED] became upset & angry & so worked verbal comments back & forth. [REDACTED] upset & thinks her assignment is too heavy but she had 4 completed, 4 set up & 1 more. Although yesterday she just did one of them for her.

STATEMENT BY EMPLOYEE:

(Error)
Counselor Refused to sign & denied all
[REDACTED]

RESOLUTION OF PROBLEM OR ACTION TAKEN:

getting to work on time & working as a team
or suspension possible

Marilyn [REDACTED]
Signature of Staff Member

8/20/96
Date

[REDACTED]
Signature of Employee

[REDACTED]
Date

EMPLOYEE COUNSELING FORM

DATE: 8/20/96

EMPLOYEE: Thompson SPN

PROBLEM:

[REDACTED] has been late 4 days in the past week
Wed. 8/14 7⁰⁵
Thurs 8/15 7⁰⁵
Friday 8/16 7⁰²
Tues. 8/20 7⁰²

STATEMENT BY EMPLOYEE:

RESOLUTION OF PROBLEM OR ACTION TAKEN:

If action continues, possible suspension

Thompson SPN 8/20/96
Signature of Staff Member Date

[REDACTED]
Signature of Employee Date

EMPLOYEE COUNSELING FORM

EMPLOYEE COUNSELING FORMDATE: September 21, 1997EMPLOYEE: [REDACTED]PROBLEM: unprofessionalism - patient safety

Came on duty very argumentative, upset about not having a partner, yelling & arguing at yourself & others stating you were going to quit - an argument between you & another nurse took place in a hallway, upsetting to residents, attempts to stop argument failed, you continued to be upset most of day - language became foul & offensive

STATEMENT BY EMPLOYEE:

RESOLUTION OF PROBLEM OR ACTION TAKEN:

attempts to tell you to calm down failed - stopping would be complete - failed [REDACTED] you were way out of control, you were loud, scaring people. This time you spent arguing, someone could have choked or fallen - you forgot your responsibilities. We could solve (this) by coming to me. If it happens again - I would have to send you home to cool off.

Debra - Ono Riccio 9/22/97

Signature of Staff Member

Date

Signature of Employee

Date

EMPLOYEE COUNSELING FORMDATE: 11-20-98EMPLOYEE [REDACTED]**PROBLEM:**

resident behavior -
subtle marking & knowing residents who are behavior
problems he caused. Even though you had no warning
of this behavior, in future watch for facial expression
rigidity of body, speeding out.

STATEMENT BY EMPLOYEE:

The nurse and I talked this
over and will take more notice.

RESOLUTION OF PROBLEM OR ACTION TAKEN:

[REDACTED] I have gone over what to do with certain
behavior problems & how to read a persons
expression, & how to save yourself from being
hurt by resident.

Jan-Ann Reichen
Signature of Staff Member

11/20/98
Date

[REDACTED]
Signature of Employee

Date

PERFORMANCE IMPROVEMENT PLANName: [REDACTED] Job Title: CNA Facility: SandalwoodNature of Concern: ☐ Absenteeism ☐ Dress Code ☒ Behavior ☐ Performance
☐ Tardiness ☒ Other (describe) inappropriate conduct

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: November 28, 1998Specific Description of Issue, Situation or Behavior (what, where, how): in searching out clothes in laundry dept. began using vulgar language becoming upset and losing control. Behavior cont. upst in hallway in hearing distance of residents, this behavior influenced + effected mood of other employees.Immediate and Continued Change Needed for Success: Spoke to employee, cautioned: (think about what she is going to say, + express it in more appropriate way). More calm behavior needed.Action Taken ☐ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☒ Written Notice (Date) _____ and return to work on _____
☐ Termination (Date) _____**Further performance problems of any kind may lead to further corrective action up to and including termination of employment.**Employee Comments: _____

_____Debra-Ann Rice RN 11/3/98
Supervisor's Signature Date[REDACTED] 12/3/98
Employee's Signature Date☒ Employee Refused to Sign - Requires Witness SignatureJane Satom 12/3/98
Dept. Head/Administrator Date_____
Witness Signature Date

Copy to Personnel File (White)

Employee (Canary)

Supervisor (Pink)

PERFORMANCE IMPROVEMENT PLANName [REDACTED] Job Title CNA Facility SandalwoodNature of Concern: ☐ Absenteeism ☒ Dress Code ☐ Behavior ☐ Performance
☐ Tardiness ☒ Other (describe) following policy.

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: 12/4/98

Specific Description of Issue, Situation or Behavior (what, where, how): _____

If any injury occurs at work you need to report it to your
charge nurse immediately to ensure that you
receive the proper tx.

Immediate and Continued Change Needed for Success: Not following policy re: employee
injury could lead to delay in tx & delay in healing time
& could lead to disciplinary actions.
Need to attend an seminar on body mechanics & SDC

Action Taken ☐ Documented Verbal Notice ☐ Suspension for _____ days to start on _____
☒ Written Notice (Date) _____ and return to work
☐ Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: sorry, but I don't know if it
happen at work or not. Is that is why
I didn't report it.Supervisor's Signature Jui Turner M Date 12-8-98Employee Signature [REDACTED] D
☐ Employee Refused to Sign - Requires Witness Signature

Dept. Head/Administrator _____

Date _____

Witness Signature _____

D

EXHIBIT 11



HR 407A

SANDALWOOD

RECORD OF COUNSELING

Employee Name: [REDACTED] Date: 12/10/04Employee #: _____ Position: CNADepartment: Nursing Location: 1403

Dates of prior disciplinary actions of counseling within the last 12 months:

Verbal counseling: ☒ First written warning: _____ Final written warning: _____

Type* and description of current specific behavior/performance/conduct requiring counseling (including actions and completion dates agreed upon to correct problem(s); indicate employee reactions, commitments, etc.):

Excessive sick calls
During 90 day probationary period employee had 3 call
outs for designated shifts.

* Type of current disciplinary action taken (e.g. Misconduct, rule #18)

Type of current disciplinary action taken:

☒ First Written Warning _____ Final Written Warning _____ Discharge _____

Employee Comments:

Any further violations of company policy, or continued performance problems either related or unrelated to the above will result in further disciplinary action up to, and including, discharge. Violations of different rules are cumulative.

My signature indicates that I have received this written warning and the above issues were discussed with me, but does not indicate that I am in agreement with the above statement(s).

Employee

Date

Supervisor

Date

Next Level Management

Date

Witness

Date

HR 408A

SANDALWOOD

MANAGEMENT PERFORMANCE IMPROVEMENT PLAN

Employee Name: [REDACTED] Employee #: _____

Performance areas/issues requiring improvement and/or correction: _____

Excessive Absenteeism

Expected action(s): Employee will have 0 sick calls & 90 days

Results to be achieved by: 3/10/05 (date)

Employee's remarks: _____

Failure to correct and meet performance expectations required by the dates indicated above will result in further disciplinary action up to and including employment termination.

Employee Signature

Date

Karen A. Stokkum-HADON
Supervisor Signature

12/10/04
Date

(Attach additional documentation)

HR 407A

SUNBRIDGE SANDALWOOD

RECORD OF COUNSELING

Employee Name: [REDACTED] Date: 5/16/05Employee #: Position: CNADepartment: Nursing Location: Sandalwood

Dates of prior disciplinary actions of counseling within the last 12 months:

Verbal counseling: ☒ First written warning: ☒ Final written warning: ☒ (516)

Type* and description of current specific behavior/performance/conduct requiring counseling (including actions and completion dates agreed upon to correct problem(s); indicate employee reactions, commitments, etc.):

5/13/05 / Friday call out
 4/22/05 Friday call out 9:45p
 3/15/05 Tuesday left early (lehrs complete)
 3/8/05 Tuesday left early (lehrs complete)
 2/22/05 Tuesday call out
 1/05/05 Wednesday call out

Per diem status
 multiple call outs
 available less
 than 50%
 counseled in
 December placed
 on 30d MIP plan
 for no call outs.

* Type of current disciplinary action taken (e.g. Misconduct, rule #18)

Type of current disciplinary action taken:

☐ First Written Warning ☐ Final Written Warning ☒ Discharge

Employee Comments:

Any further violations of company policy, or continued performance problems either related or unrelated to the above will result in further disciplinary action up to, and including, discharge. Violations of different rules are cumulative.

My signature indicates that I have received this written warning and the above issues were discussed with me, but does not indicate that I am in agreement with the above statement(s).

Employee: [Signature] Date: 5/16/05 Supervisor: [Signature] Date: 5/16/05
 Next Level Management: [Signature] Date: Witness: Date:

EXHIBIT 12

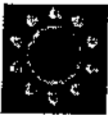


PERSONNEL ACTION NOTICE

☐ NEW HIRE
☐ REHIRE
☒ CHANGE
☒ TERMINATION

BIO DATA		<input type="checkbox"/> BIO DATA		<input type="checkbox"/> JOB	<input type="checkbox"/> PAY	<input type="checkbox"/> TRANSFER	<input type="checkbox"/> LEAVE OF ABSENCE	<input checked="" type="checkbox"/> TERMINATION
Last Name	First Name	M.	FAC #	1403	Employee #			
Address	Street/P.O. Box	City/Town	State	Zip	Phone			
S.S.N.	Sex	Race	Birthdate					
Emergency Contact Person: Name (& Relationship)				Phone (Home)		(Work)		
Dept.	Nsg	Job	C.N.A.	Base Pay Rate \$	Hourly/Salaried	Hourly/Salaried	Hours Hired For	
TAX								
Marital Status	FEDERAL	STATE	LOCAL					
Exemptions								
Add'l Withholding								
PAY CHANGE								
<input type="checkbox"/> Orientation Review				<input type="checkbox"/> Annual Review	<input type="checkbox"/> Other			
New Base Rate \$				New PIB Rate \$				
TRANSFER								
Old Facility # / Job Classification				New Facility # / Job Classification		Effective Date (former facility)		
Comments								
LEAVE OF ABSENCE								
<input type="checkbox"/> Disability				<input type="checkbox"/> Military	<input type="checkbox"/> Jury Duty	<input type="checkbox"/> Personal	<input type="checkbox"/> Workers Compensation	<input type="checkbox"/> Family & Medical
Benefit Hours to be Paid				Expected Return Date		<input type="checkbox"/> Owes Insurance Premiums		
TERMINATION								
Reason for Separation				Eligible for Rehire		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> COBRA
COMMENTS								
New Hire on 04/09/04 and since, has had 2 N/c N/s on 04/10 and 04/17. Employee also c/o for a shift 15 mins. prior to end of shift on 04/18/04. Employee also c/o ill for 04/23/04 and Tardy on 05/04/04								
Dept. Head				Administrator		Date		
Steph				Stephen Copper		5/10/04		
Regional						Date		

EXHIBIT 13



HR 407A

SUNBRIDGE SANDALWOOD

RECORD OF COUNSELING

Employee Name: [REDACTED] Date: 8/14/04Employee #: _____ Position: CNADepartment: NSG Location: NSG #1403

Dates of prior disciplinary actions of counseling within the last 12 months:

Verbal counseling: _____ First written warning: ☒ Final written warning: ☒

Type* and description of current specific behavior/performance/conduct requiring counseling (including actions and completion dates agreed upon to correct problem(s); indicate employee reactions, commitments, etc.):

Booked double shift 8/13/04 employee did not call or show for work, employee did not answer phone until 10³⁰ AM, employee suspended for one day

* Type of current disciplinary action taken (e.g. Misconduct, rule #18)

Type of current disciplinary action taken:

_____ First Written Warning ☒ Final Written Warning

~~_____ Discharge~~ _____ Discharge

Employee Comments:

Any further violations of company policy, or continued performance problems either related or unrelated to the above will result in further disciplinary action up to, and including, discharge. Violations of different rules are cumulative.

My signature indicates that I have received this written warning and the above issues were discussed with me, but does not indicate that I am in agreement with the above statement(s).

Employee	Date	Supervisor	Date
<i>[Signature]</i>	<i>8/14/04</i>	<i>[Signature]</i>	<i>8/14/04</i>
Next Level Management	Date	Witness	Date



HR 407A

SUNBRIDGE SANDALWOOD

RECORD OF COUNSELING

Employee Name: [REDACTED] Date: 8/13/04Employee #: _____ Position: CNADepartment: NSG Location: NSG

Dates of prior disciplinary actions of counseling within the last 12 months:

Verbal counseling: ☒ First written warning: _____ Final written warning: _____

Type* and description of current specific behavior/performance/conduct requiring counseling (including actions and completion dates agreed upon to correct problem(s); indicate employee reactions, commitments, etc.): excessive absence, Booked 7-2-04 double shift

Called out,

Booked 7/16/04 was No Call No show until
also was booked a double shift left early at
Called out 7/20/04 and 7/21/04 medical reasons

* Type of current disciplinary action taken (e.g. Misconduct, rule #18)

Type of current disciplinary action taken:

☒ First Written Warning _____ Final Written Warning _____ Discharge

Employee Comments:

Any further violations of company policy, or continued performance problems either related or unrelated to the above will result in further disciplinary action up to, and including, discharge. Violations of different rules are cumulative.

My signature indicates that I have received this written warning and the above issues were discussed with me, but does not indicate that I am in agreement with the above statement(s).

Employee	Date	Supervisor	Date
<u>[Signature]</u>	<u>8/14/04</u>	<u>[Signature]</u>	<u>8/14/04</u>
Next Level Management	Date	Witness	Date

EXHIBIT 14

Commonwealth of Massachusetts

Massachusetts Commission Against Discrimination

_____)	MCAD Docket No. 04SEM02262
Wendy Gauthier,)	EEOC Case No. 16CA402362
)	
Complainant,)	
)	
v.)	
)	
SunHealth Specialty Services, Inc.)	
<i>et al.</i> ;)	
)	
Respondents)	
_____)	

**Position Paper of Respondents SunHealth Specialty Services, Inc.
and SunBridge Healthcare Corporation**

I. INTRODUCTION

This position paper is submitted on behalf of the respondents, SunHealth Specialty Services, Inc., A New Mexico corporation ("SunHealth") and SunBridge Healthcare Corporation, a New Mexico corporation ("SunBridge") (together, "Respondents"). SunHealth and SunBridge are co-employers of Complainant, Wendy Gauthier. SunBridge operates the facility known as SunBridge Care & Rehabilitation for Sandalwood ("Sandalwood") located in Oxford, Massachusetts. This Position Paper is submitted in response to the discrimination claims filed by the Complainant alleging gender, disability and pregnancy discrimination and retaliatory discharge under Massachusetts General Laws, chapter 152, Section 75B, the Americans with Disabilities Act and Title VII of the Civil Rights Act.

II. DISCRIMINATORY ALLEGATIONS

Count One alleges failure to file and failure to accommodate a workers' compensation injury;

Count Two, additionally, or in the alternative, alleges a failure to accommodate a pregnancy related complication; and

Count Three alleges retaliatory discharge based upon Counts One and Two.

A. COUNT ONE.

Respondents' answer to Count One.

1. Allegations. Complainant states that she was employed full time at Sandalwood as a Certified Nursing Assistant from December, 2003 through the date of her termination. Complainant alleges that she strained a muscle while moving a patient, but no workers' compensation claim was filed on her behalf. In addition, following the injury Complainant alleges that she was denied light duty although other employees were granted such duty.
2. Response. Complainant was hired on December 22, 2003 as a Per Diem employee anticipated to work 24 hours per pay period on the 11 P.M. to 7 AM shift. Per Diem employees have no regularly scheduled hours but instead work on an as needed basis. Complainant was not a full time employee. See Exhibit 1.

Complainant, like all employees, is responsible for notifying the employer that a workers' compensation injury has occurred. Workers' Compensation Claim Number 9000541087 was opened for Complainant for an injury dated January 24, 2004. Respondents have no further information concerning the disposition of the claim at this time, but have requested a report from the workers' compensation insurance carrier. Complainant's personnel file contains no evidence of any kind that Complainant requested light duty following her injury.

B. COUNT TWO

1. Allegations. Complainant alleges that she informed Respondents that she was suffering from pregnancy related complications. Complainant further alleges that she requested, but was denied, accommodation for her pregnancy complications.
2. Response. It is not clear that Complainant informed Respondents of her pregnancy, other than providing the following:

2.1 A Progress note from Saint Vincent Hospital dated April 28, 2004, indicating that she was examined on that date in the labor and delivery department, but was released to return to work her regular duties. Exhibit 2.

2.2 a written statement, dated May 6, 2004, from her physician,

who practices obstetrics and gynecology, that states as follows:

“To Whom It May Concern:

Wendy Gauthier is a patient under my care and was seen in the office today. It is my recommendation that she be able to perform her duties as usual at work. Any questions regarding this matter, please call the office. Thank you.” Exhibit 3.

Neither statement identifies the reason for Complainant’s visit, but each clearly states that she is able to perform her duties as usual.

C. COUNT THREE.

1. Allegations. Complainant alleges that she was fired because she was injured on the job and because she requested accommodation for her injury and/or her pregnancy complications.
2. Response. There is ample evidence that Complainant was fired because of excessive absences from work despite numerous warnings. There is no evidence that Complainant was unable to perform the usual duties of her job or that she requested accommodation for any reason.

Sandalwood is a skilled nursing facility regulated by the state of Massachusetts and the federal Centers for Medicare and Medicaid. Consistent work attendance is a critical part of Complainant’s position for both operational and regulatory reasons.

Sandalwood has an Attendance and Punctuality Standards Policy whose purpose is to assure the operation of the facility with as little disruption as possible (as mandated by regulatory requirements). A true and correct copy of this policy is attached as Exhibit 4. The Policy is contained in Sandalwood’s employee handbook. Complainant acknowledged in writing her receipt of the handbook. Exhibit 5. From January 1, 2004 through May15, 2004, Complainant had 16 absences. None of these absences was reported to be caused by either her work injury or pregnancy complications. Complainant’s pattern of absences began with her failure to show up for her scheduled work orientation on January 1, 2004, and continued throughout the course of her employment. Exhibit 6.

The Attendance Policy states as follows:

“4. No Call/No Show: Failure to call and failure to show up for work for

one scheduled shift or more is considered a voluntary resignation." (see Exhibit 4, page 2); and

"Supervisors shall provide verbal counseling to employees with absences and tardiness that are not yet at the level of severity of a formal written warning as outlined below. Written warnings will be issued for:
...(b.) Three absence occurrences with proper notice within any 90-day period." (see Exhibit 4, page 3).

Despite the provisions of the Attendance Policy, Respondents permitted Complainant to continue working following a No Call/No Show on January 27, 2004. Complainant first received verbal counseling concerning her frequent absences, as well as written counseling on April 8, 2004. Exhibit 7. Pursuant to the written warning on April 8, 2004, Complainant agreed to have no further absences for the next ninety (90) days. Nevertheless, Complainant was absent for an additional five days between April 8 and May 17, 2004, including a No Call/No Show on May 16th, when Complainant failed to respond to 4 messages left by her supervisor. Exhibit 8.

V. CONCLUSION

These claims against Respondents should be dismissed. Respondents adhere to and enforce vigorously all applicable federal and state laws against discrimination in employment. Respondents likewise enforce the attendance and punctuality policy, as required by state and federal regulations. Complainant was terminated for excessive absenteeism and no other reason.

Respondents are not represented by outside counsel with respect to this matter. The undersigned is authorized to execute any and all documents on behalf of Respondents. I declare under the pains and penalties of perjury that the foregoing is true and correct. Dated this 5th day of October, 2004.

**SUNHEALTH SPECIALTY SERVICES, INC.,
A NEW MEXICO CORPORATION**

By: Peta L. Hallisey
Peta L. Hallisey, corporate counsel

**SUNBRIDGE HEALTHCARE CORPORATION,
A NEW MEXICO CORPORATION**

By: Peta L. Hallisey
Peta L. Hallisey, corporate counsel